रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 5] नई दिल्ली, जनवरी 27—फरवरी 2, 2013, शनिवार/माघ 7—माघ 13, 1934
No. 5] NEW DELHI, JANUARY 27—FEBRUARY 2, 2013, SATURDAY/MAGHA 7—MAGHA 13, 1934

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 18 जनवरी, 2013

का. आ. 220.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(ज) और (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री पारस मल चोपड़ा (जन्म तिथि: 28-01-1959) को उनकी नियुक्ति की अधिसचूना की तिथि से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, ओरियंटल बैंक ऑफ कामर्स के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के रूप में नामित करती है ।

[फा. सं. 6/37/2011-बीओ-I]
विजय मल्होत्रा, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 18th January, 2013

S.O. 220.—In exercise of the powers conferred by sub-section 3(h) and (3-A) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of Clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government hereby Nominates Shri Paras Mal Chopda (DoB: 28-01-1959) as part-time non-official director on the Board of Directors of Oriental Bank of Commerce for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F. No. 6/37/2011-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 21 जनवरी, 2013

का. आ. 221.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उपखंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, यूनियन बैंक ऑफ इंडिया के कार्यपालक निदेशक श्री एस. एस. मुन्द्रा (जन्म तिथि : 18-07-1954) को उनके द्वारा पदभार ग्रहण करने की तारीख से 31-07-2014 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त कर लेने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, बैंक आफ बड़ौदा के अध्यक्ष एवं प्रबंध निदेशक के रूप में नियुक्त करती है ।

[फा. सं. 4/4/2011-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 21st January, 2013

S.O. 221.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of Clause 3 and sub-clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Sh. S.S. Mundra (DoB: 18-07-1954), Executive Director, Union Bank of India as Chairman and Managing Director, Bank of Baroda, from the date of his taking over the charge of the post till 31-07-2014, i.e. the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[F. No. 4/4/2011-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 21 जनवरी, 2013

का. आ. 222.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उपखंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, इण्डियन ओवरसीज बैंक के महाप्रबंधक श्री के. सुब्रमणियम (जन्म तिथि : 15-07-1955) को उनके द्वारा पदभार ग्रहण करने की तारीख से 31-07-2015 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त कर लेने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, यूनियन बैंक ऑफ इंडिया के कार्यापालक निदेशक के रूप में नियुक्त करती है ।

[फा. सं. 4/5/2011-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 21st January, 2013

S.O. 222.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of Clause 3 and sub-clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri K. Subrahmanyam (DoB: 15-07-1955), General Manager, Indian Overseas Bank as Executive Director, Union Bank of India, with effect from the date of his taking over charge of the post till 31-07-2015, i.e. the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[F. No. 4/5/2011-BO-I]
VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 28 जनवरी, 2013

का. आ. 223.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उपखंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, इलाहाबाद बैंक के महाप्रबंधक श्री बी. के. श्रीवास्तव (जन्म तिथि : 20-12-1955) को उनके द्वारा पदभार ग्रहण करने की तारीख से 31-12-2015 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त कर लेने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, कार्पोरेशन बैंक के कार्यापालक निदेशक के रूप में नियुक्त करती है ।

[फा. सं. 4/5/2011-बीओ-I]
विजय मल्होत्रा, अवर सचिव

New Delhi, the 28th January, 2013

S.O. 223.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri B. K. Srivastava (DoB:20-12-1955), General Manager, Allahabad Bank as Executive Director, Corporation Bank, with effect from the date of his taking over charge of the post and upto 31-12-2015, i.e. the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[F. No. 4/5/2011-BO-I]

VIJAY MALHOTRA, Under Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

(पूर्ति प्रभाग)

नई दिल्ली, 16 जनवरी, 2013

का. आ. 224.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, वाणिज्य एवं उद्योग मंत्रालय, वाणिज्य विभाग (पूर्ति प्रभाग) के निम्नलिखित कार्यालयों में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरुप निम्न कार्यालयों को एतद्द्वारा अधिसूचित करती है :—

1. पूर्ति तथा निपटान निदेशालय
निष्ठा भवन, न्यू मैरीन लाईन्स
मुम्बई-400020

2. गुणता आश्वासन निदेशालय,
पू.नि.म.नि., चतुर्थ तल,
जीवन तारी बिल्डिंग,
संसद मार्ग,
नई दिल्ली-110001

3. उपनिदेशक (गु.आ.) का कार्यालय
सड़क-10, सैक्टर-1,
भिलाई नगर-490001 (छत्तीसगढ़)

4. गुणता आश्वासन निदेशालय
डाकघर-बर्नामाईन्स
जमशेदपुर-831007

[फा. सं. ई-11016/6/2004-हिन्दी]
अनुराग सक्सैना, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

(SUPPLY DIVISION)

New Delhi, the 16th January, 2013

S. O. 224.—In pursuance of Sub-rule (4) of Rule (10) of Official Language (Use for Official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the Ministry of Commerce and Industry, Department of Commerce (Supply Division), where more than 80% of Employees have attained working knowledge of Hindi :—

1. Directorate of Supplies & Disposal,
Nistha Bhawan,
New Marine Lines,
Mumbai-400020

2. Directorate of Quality Assurance,
DGS&D, Fourth Floor,
Jeevan Tara Building,
Sansad Marg,
New Delhi-110001

3. Office of DD(Quality Assurance)
Road -10, Sector-I,
Bhilai City - 490001,
(Chhattisgarh)

4. Directorate of Quality Assurance
P. O. burmamines
Jamshedpur-831007

[F. No. E-11016/6/2004-Hindi]

ANURAG SAXENA, Jt. Secy.

उपभोक्ता मामले खाद्य एवं सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 14 जनवरी, 2013

का.आ. 225.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाइसेंस प्रदान किए गए हैं:—

अनुसूची

क्रम सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि, वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भा.मा.सं.	भाग	अनु.	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3875886	5 अक्तूबर, 2012	नोबल हेल्थ केयर राजकोट नेशनल हाइवे, बस स्टोप न. 02, स्वामीनारायण मंदिर के सामने, गाँव वडाल, जिला जूनागढ़ गुजरात -362310	पैकेजब्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	0	0	2004
2.	3876282	10 अक्तूबर, 2012	फीगो इलैक्ट्रीकल्स सम्राट इन्डस्ट्रीयल एरिया, एस. टी. वर्कशाप के पीछे, राजकोट, गुजरात-360003	निमज्जनीय पम्प सेट	8034	0	0	2002
3.	3876383	10 अक्तूबर, 2012	फीगो इलैक्ट्रीकल्स सम्राट इन्डस्ट्रीयल एरिया, एस. टी. वर्कशाप के पीछे, राजकोट, गुजरात-360003	खूले कुएं के लिए निमज्जय पम्प सेट	14220	0	0	1994
4.	3876686	10 अक्तूबर, 2012	गोल्ड स्टार इन्जीनियर्स प्लाट नं 32, सरदार इन्डस्ट्रीज एरिया, सोलवंत ओइल मील के पीछे, 8बी नेशनल हाइवे, कोठारीया गोंडल रोड, राजकोट, गुजरात-360004	निमज्जनीय पम्प सेट	8034	0	0	2002
5.	3876787	10 अक्तूबर, 2012	गोल्ड स्टार इन्जीनियर्स प्लाट नं 32, सरदार इन्डस्ट्रीज एरिया, सोलवंत ओइल मील के पीछे, 8बी नेशनल हाइवे, कोठारीया गोंडल रोड, राजकोट, गुजरात-360004	खुले कुएं के लिए निमज्जय पम्प सेट	14220	0	0	1994

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
6.	3876888	10 अक्तूबर, 2012	फाल्कन पाईप्स प्राईवेट लिमिटेड प्लाट नम्बर 26/45, रोड नम्बर 11, कालावाड रोड, लोधीका, जी. आई. डी. सी. एस्टेट, मेटोडा, जिला राजकोट, गुजरात-360035	जल आपूर्ति हेतु उच्च घनत्व पॉलीइथाइलीन पाइप	4984	0	0	1995
7.	3877587	11 अक्तूबर, 2012	देव मुर्दा मांडवी चोक, सोनी बाजार, राजकोट, गुजरात-360001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
8.	3878791	15 अक्तूबर, 2012	रीया ज्वेलर्स शाप नं. 3 जी-एफ, युनीवर्सिटी रोड, कोटेचा चोक के पास, राजकोट, गुजरात-360005	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
9.	3879692	16 अक्तूबर, 2012	पैसीफीक इल्कट्रीकल्स प्लाट नम्बर 10, साखीया नगर, गोकुलधाम मैन रोड, राजकोट, गुजरात-360004	निमज्जनीय पम्प सेट	8034	0	0	2002
10.	3879793	16 अक्तूबर, 2012	टेराफ्लो इन्जीनीयरींग प्लाट नं. 80, अमृत उद्योग, गुरुकृपा कास्टींग के पीछे, सोमनाथ इन्डस्ट्रीज एरिया के पास, कोठारीया, राजकोट, गुजरात-360003	निमज्जनीय पम्प सेट	8034	0	0	2002
11.	3879894	16 अक्तूबर, 2012	टेराफ्लो इन्जीनियरिंग प्राईवेट लिमिटेड प्लाट नं. 80, अमृत उद्योग, गुरुकृपा कास्टिंग के पीछे, सोमनाथ इन्डस्ट्रीज एरिया के पास, कोठारीया, राजकोट, गुजरात-360003	खुले कुएं के लिए निमज्जय पम्प सेट	14220	0	0	1994

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
12.	3880273	19 अक्तूबर, 2012	सरदार स्टील इन्डस्ट्रीज सर्वे नम्बर 176/1, शिहोर अहमदाबाद राजमार्ग, जी. आई. डी. सी. 4, घन्घाली, तालुका शिहोर, जिला भावनगर, गुजरात-364240	सामान्य संरचना कार्यों के लिए इस्पात	2062	0	0	2011
13.	3880374	19 अक्तूबर, 2012	प्रकास पम्प इन्डस्ट्रीज प्लाट नम्बर 11/12, न्यु सोमनथ इंडस्ट्रीयल-3, 8 नेशनल हाइवे होटेल, कृष्ना फार्क के पीछे, कोठारीया राजकोट, गुजरात-360004	निमज्जनीय पम्प सेट	8034	0	0	2002
14.	3880879	22 अक्तूबर, 2012	गोल्ड प्लास्ट सर्वे नम्बर 191, प्लाट नम्बर 2, शन्तिधाम रोड, ओरकेव फार्मा के पीछे, वेरावल (शापर), जिला राजकोट, गुजरात	जल आपूर्ति हेतु उच्च घनत्व पॉलीइथाइलीन पाइप	4984	0	0	1995
15.	3881174	22 अक्तूबर, 2012	मैक्स बेवरेजीस मारूती कृपा, लक्ष्मी नगर मैन रोड, त्रिमूर्ती टावर के पीछे, महादेव वाडी, राजकोट, गुजरात	पैकेजब्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा	14543	0	0	2004
16.	3881275	22 अक्तूबर, 2012	आकार ज्वेलर्स गोपी मीरा कोम्प्लेक्ष, । पांजरापोल रोड, बोटाद, जिला भावनगर, गुजरात-364710	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
17.	3881780	25 अक्तूबर,.2012	वरीया इन्डस्ट्रीज सर्वे नम्बर 402, हाउस नम्बर 07/8/99/00, उमाकांत उद्योग नगर, तान्ती फाउन्ड्री के पास, मवडी पलोट, राजकोट, गुजरात-360004	खुले कुएं के लिए निमज्जय पम्प सेट	14220	0	0	1994

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
18.	3881881	25 अक्तूबर, 2012	वरीया इन्डस्ट्रीज सर्वे नम्बर 402, हाउस नम्बर 07/8/99/00, उमाकांत उद्योग नगर, तान्ती फाउन्ड्री के पास, मवडी प्लोट, राजकोट, गुजरात-360004	निमज्जनीय पम्प सेट	8034	0	0	2002
19.	3881982	25 अक्तूबर, 2012	स्काईलार्क पम्पस प्राईवेट लिमिटेड, पटेल नगर गली नम्बर 3, 80 फीट रोड, सोरठीयावाडी चोक के पास, राजकोट, गुजरात-360002	निमज्जनीय पम्प सेट	8034	0	0	2002
20.	3882075	25 अक्तूबर, 2012	सरदार ज्वेलर्स ग्रीन मार्केट रोड, ए.टी.एम. वोर्ड नं. 6 के सामने, कालावड, जिला जामनगर, गुजरात-361160	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
21.	3882378	26 अक्तूबर, 2012	न्यू पटेल ड्रिंकिंग वाटर गाँव सोआयल, तालुका धरोल, जिला जामनगर, गुजरात	पैकेजबन्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	0	0	2004
22.	3883178	29 अक्तूबर, 2012	आर्ट गोल्ड भाटनी आंबली, आनंदबावा चोक के पास, पोस्ट जामनगर, जिला जामनगर, गुजरात	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
23.	3883279	29 अक्तूबर, 2012	मैसर्स उदयकुमार अेन्ड ब्रोथर्स मैन बाजार, बाबरा, जिला अमरेली, गुजरात-365421	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999
24.	3883380	29 अक्तूबर, 2012	जोज्ञासा जवेलर्स मतवा स्ट्रीट के पास, सोनी बाजार, चांदी बाजार, जिला जामनगर, गुजरात-361001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1999

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
25.	3883248	29 अक्तूबर, 2012	सोना ज्वेलर्स एम जी रोड, कापड बाजार, मांगरोल, जिला जुनागढ, गुजरात-362225	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन	1417	0	0	1991
26.	3883784	31 अक्तूबर, 2012	प्युरली बेवरेजीस गाँव मोटी राजस्थली, तालुका पालीताना, जिला भवनगर, गुजरात-364290	पैकेजब्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	0	0	2004

[सं. केन्द्रीय प्रमाणन विभाग/13:11]

एम. राधाकृष्णा, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 14th January, 2013

S.O. 225.—In pursuance of sub-regulation(5) of regulation 4 of the Bureau of Indian Standards (Certificate) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule :—

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
01.	3875886	05/10/2012	Noble Health Care, Rajkot National Highway, Bus Stop No. 02 , Opposite Swaminarayan Tample, At: Vadal, Distt : Junagadh, Gujarat-362310	Packaged Drinking Water	14543	0	0	2004
02	3876282	10/10/2012	Figo Electricals, Samarat Industrial Area, Behind S. T. Workshop, Rajkot, Gujarat-360003	Submersible Pumpsets	8034	0	0	2002
03.	3876383	10/10/2012	Figo Electricals,. Samarat Industrial Area, Behind S.T. Workshop, Rajkot, Gujarat-360003	Openwell Submersible Pumpsets	14220	0	0	1994
04.	3876686	10/10/2012	Gold Star Engineers, Plot No. 32, Sardar Industrial Area, Behind Solvant Oil Mill, 8-B National Highway, Kothariya- Gondal Road, Rajkot ,Gujarat -360004	Submersible Pumpsets	8034	0	0	2002

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
05.	3876787	10/10/2012	Gold Star Engineers, Plot No. 32, Sardar Industrial Area, Behind Solvant Oil Mill, 8-B National Highway, Kothariya- Gondal Road, Rajkot, Gujarat -360004	Opewell Submersible Pumpsets	14220	0	0	1994
06.	3876888	10/10/2012	Falcon Pipes Pvt. Ltd. Plot No. 2645, Road No. 11, Kalawad Road, Lodhika GIDC Estate, Metoda, District- Rajkot, GIDC Metoda, Distt : Rajkot, Gujarat	High Density Polyethylene Pipes for Water Supplies	4984	0	0	1995
07.	3877587	11/10/2012	Dev Mudra Mandvi Chock, Soni Bajar, Distt : Rajkot Gujarat, 360001	Gold and Gold Alloys, Jewellery/Artefacts - Fineness And Marking	1417	0	0	1999
08.	3878791	15/10/2012	Riya Jewellers Shop No.3 G-F, University Road Near, Kotecha Chowk, Distt : Rajkot, Gujarat-360005	Gold and Gold Alloys, Jewellery/Artefacts -Fineness and Marking	1417	0	0	1999
09.	3879692	16/10/2012	Pacific Electricals Plot No. 10, Sakhiya Nagar, Gokuldham Main Road, Rajkot, Gujarat-360004	Submersible Pumpsets	8034	0	0	2002
10.	3879793	16/10/2012	Teraflo Engineering Pvt. Ltd., Plot No. 80, Amrut Udhyog, Behind Gurukrupa Casting, Near Somnath Industrial Area, Kothariya, Rajkot, Gujarat-360003	Submersible Pumpsets	8034	0	0	2002
11.	3879894	16/10/2012	Teraflo Engineering Pvt. Ltd., Plot No. 80, Amrut Udhyog, Behind Gurukrupa Casting, Near Somnath Industrial Area, Kothariya, Rajkot, Gujarat-360003	Openwell Submersible Pumpsets	14220	0	0	1994

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
12.	3880273	19/10/2012	Sardar Steel Industries, Survey No. 176/1, Sihor Ahmedabad Highway, Gidc IV, Ghanghli, Taluka Sihor, District Bhavnagar, Gujarat-364240	Hot Rolled Medium and High Tensile Structural Steel	2062	0	0	2011
13.	3880374	19/10/2012	Prakash Pump Industries, Plot No.11/12, New Somnath Industrial-3, 8/b National Highway, Opp. Hotel Krishna Park, Kothariya, Rajkot, Gujarat-360004	Submersible Pumpsets	8034	0	0	2002
14.	3880879	22/10/2012	Gold Plast, Survey No. 191, Plot No.2, Shantidham Road, Behind Orchev Pharma, Veraval (Shapar), District Rajkot, Gujarat	High Density Polyethylene Pipes For Water Supplies	4984	0	0	1995
15.	3881174	22/10/2012	Max Beverages, Maruti Krupa, Laxmi Nagar Main Road, Behind Trimurti Tower, Mahadev Vadi, Rajkot, Gujarat	Packaged Drinking Water	14543	0	0	2004
16.	3881275	22/10/2012	Akar Jewellers Gopi Mira Complex, 1 Panjarapole Road, Botad, Distt : Bhavnagar, Gujarat-364710	Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking	1417	0	0	1999
17.	3881780	25/10/2012	V Ariya Industires, Survey No.402, House No.07/8/99/00, Umakant Udhyog Nagar, Nr.tanti Foundry, Mavdi Plot, Rajkot, Gujarat-360004	Openwell Submersible Pumpsets	14220	0	0	1994
18.	3881881	25/10/2012	Variya Industries, Survey No.402, House No.07/8/99/00, Umakant Udhyog Nagar, Nr.Tanti Foundry, Mavdi Plot, Rajkot, Gujarat-360004	Submersible Pumpsets	8034	0	0	2002

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
19.	3881982	25/10/2012	Skylark Pumps Private Limited Patel Nagar, Street No.3, 80 Feet Road, Near Sorathiyawadi Chowk, Rajkot, Gujarat 360002	Submersible Pumpsets	8034	0	0	2002
20.	3882075	25/10/2012	Sardar Jewellers Grain Market Road, Opp.ATM Ward No.6, Kalavad, Distt : Jamnagar Gujarat-361160	Gold and Gold Alloys, Jewellery/Artefacts-Fineness And Marking	1417	0	0	1999
21.	3882378	26/10/2012	New Patel Drinking Water, Village Soyal Taluka Dhrol Distt : Jamnagar Gujarat	Packaged Drinking Water	14543	0	0	2004
22.	3883178	29/10/2012	Art Gold Bhatni Amabli, Nr Anandbava Chakla, Post Jamnagar, Distt : Jamnagar Gujarat	Gold And Gold Alloys, Jewellery/Artefacts-Fineness And Marking	1417	0	0	1999
23.	3883279	29/10/2012	Uday Kumar And Brothers Main Bazar, Babara, Distt : Amreli Gujarat-365421	Gold And Gold Alloys, Jewellery/Artefacts-Fineness And Marking	1417	0	0	1999
24.	3883380	29/10/2012	Jignasha Jewellers Near Matva Street, Soni Bazar, Chandi Bazar, Distt : Jamnagar Gujarat-361001	Gold And Gold Alloys, Jewellery/Artefacts-Fineness And Marking	1417	0	0	1999
25.	3883481	29/10/2012	Sona Jewellers M.G. Road, Kapad Bazar, Mangrol Distt : Junagadh Gujarat, 362225	Gold And Gold Alloys, Jewellery/Artefacts-Fineness And Marking	1417	0	0	1991
26.	3883784	31/10/2012	Purely Beverages, At Village Moti Rajasthli Taluka Palitana District Bhavnagar Gujarat-364290	Packaged Drinking Water	14543	0	0	2004

[No. CMD/13:11]

M. RADHAKRISHNA, Scientist 'F' & Head

नई दिल्ली, 18 जनवरी, 2013

का.आ. 226.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उप विनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाइसेंस प्रदान किए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भामा.सं.	भाग	अनु.	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3885283	5 नवम्बर, 2012	फाईबरटेक कम्पोजाईट प्राइवेट लिमिटेड, सर्वे नम्बर 20/21, गॉव पीपलाना, तालुका कोटडा सांगानी, जिला राजकोट गुजरात -360024	पेयजल पूर्ति के लिए प्रयुक्त काँच रेशे से प्रबलित प्लास्टिक, पाईप जोड और फिटिंग	12709	0	0	1994
2.	3887085	09 नवम्बर, 2012	पाला ज्वेलर्स वेरावल रोड, तालाला, गुजरात 361250	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्टि	1417	0	0	1999
3.	3887388	09 नवम्बर, 2012	जवेरी ज्वेलर्स मैन बाजार, बडोया, तालुका अमरेली, गुजरात 365480	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्टि	1417	0	0	1999
4.	3887489	09 नवम्बर, 2012	भुवनेश्वरी ज्वेलर्स एम. जी. रोड, मैन बाजार, लिजा जुनागढ, गुजरात 362620	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन विशिष्टि	1417	0	0	1999
5.	3887590	09 नवम्बर, 2012	कनैया ज्वेलर्स मैन बाजार, डा. रादिया सर आदित्या के पास, जिला पोरबंदर, गुजरात 362550	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन -विशिष्टि	1417	0	0	1999
6.	3887693	09 नवम्बर, 2012	मांनी अमृतलाल लालजीभाई मामाई चोक मालिया हथिना, जिला जुनागढ, गुजरात 362245	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्टि	1417	0	0	1999

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
7.	3887792	09 नवम्बर, 2012	नमदलाल भगवानजी सोनी वी. पी. रोड़, बस स्टेन्ड के पीछे, बाटवा, ज़िला जुनागढ़, गुजरात 362220	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्टि	1417	0	0	1999
8.	3887893	09 नवम्बर, 2012	ज्वेलरी पोइन्ट वी. पी. रोड़, बस स्टेन्ड के पीछे, बाटवा, जिला जुनागढ़, गुजरात 362620	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्टि	1417	0	0	1999
9.	3888087	12 नवम्बर, 2012	त्रिमुर्ती ज्वेलर्स वी. पी. रोड़, बाटवा, जिला जुनागढ़, गुजरात 362620	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन-विशिष्टि	1417	0	0	1999
10.	3888794	14 नवम्बर, 2012	दुर्गा ज्वेलर्स ओंमकार कोम्प्लेक्स, चोटरीया कुवा रोड, कालापीर गर्ग के पास, जसदन, जिला राजकोट, गुजरात 360050	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन विशिष्टि	1417	0	0	1999
11.	3888895	14 नवम्बर, 2012	आशीर्वाद ज्वेलर्स शोप नं. 9, डो. केलकर रोड, जिला दीव, दमन दिव-362520	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन विशिष्टि	1417	0	0	1999
12.	3888996	14 नवम्बर, 2012	कल्याण ज्वेलर्स 1, 101 से 302, ओरबिट एनक्लेव, डो. गॉज़िक रोड, जिला राजकोट, 360002	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन विशिष्टि	1417	0	0	1999
13.	3889089	14 नवम्बर, 2012	सैफी ज्वेलर्स किताबी बिल्डिंग, बुजारी बाजार मैन गेड, जिला राजकोट, गुजरात 360001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन विशिष्टि	1417	0	0	1999
14.	3890175	23 नवम्बर, 2012	गणेश स्टील रोलिंग मिल प्लोट नं 65 जी आई डी सी, चीत्रा, भावनगर, गुजरात 364004	कंक्रीट प्रबलन के लिए उच्च सामर्थ्य विकसित इस्पात छड़ और तार	1786	0	0	2008

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
15.	3890276	23 नवम्बर 2012	श्री गणेश स्टील इन्डस्ट्रीज ब्लोक नं 58/1, सीताराम वेटब्रीज के पीछे, तालाला रोड, मामसा, तालुका भावनगर, गुजरात-364001	कंक्रीट प्रबलन के लिए उच्च सामर्थ्य विकसित इस्पात छड़ और तार	1786	0	0	2008
16.	3890377	23 नवम्बर 2012	सरदार स्टील इन्डस्ट्रीज सर्व नं 176/1, सिहोर, अहमदाबाद हाइवे, जी आई डी सी 4, धान्धली, तालुका भावनगर, गुजरात-364240	कंक्रीट प्रबलन के लिए उच्च सामर्थ्य विकसित इस्पात छड़ और तार	1786	0	0	2008
17.	3891581	26 नवम्बर 2012	लकी स्टील इन्डस्ट्रीज रोलिंग मिल डिविजन, प्लाट नं. 206, अ, बारटेज बुधेल रोड, वारटेज, जिला भावनगर, गुजरात-364060	कंक्रीट प्रबलन के लिए उच्च सामर्थ्य विकसित इस्पात छड़ और तार	1786	0	0	2008
18.	3892482	29 नवम्बर 2012	तुलसी बेवेरिजिस विनायक पार्क हाइवे रोड, कथिरियाबाद होटेल, हलवड, जिला सुरेन्द्रनगर, गुजरात 363330	खुले कुएं के लिए निमज्जय पम्पसेट	14543	0	0	2004

[सं. केन्द्रीय प्रमाणन विभाग/13:11]

एम. राधाकृष्णा, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 18th January, 2013

S.O. 226.—In Pursuance of sub-regulation(5) of regulation 4 of the Bureau of Indian Standards (Certificate) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule :—

SCHEDULE

Sl. No.	Licences No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
01.	3885283	05/11/2012	M/s Fibertech Composite Private Limited Survey No. 20/21, Village Piplana, Taluka Kotda Sangani, District: Rajkot, Gujarat-360024	Specification For Glass-fibre Reinforced Plastic (Grp) Pipes Joints And Fittings For Use For Potable Water Supply	12709	0	0	1994

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
02.	3887085	09/11/2012	M/s Pala Jewellers Veraval Road, Talala, District: Junagadh, Gujarat-361250	Gold And Gold Alloys, Jewellery/ Artefacts - Fineness And Marking	1417	0	0	1999
03.	3887388	09/11/2012	M/s Javeri Jewellers Main Bazar, Vadiya, District: Amreli, Gujarat-365480	Gold And Gold Alloys, Jewellery/Artefacts - Fineness And Marking	1417	0	0	1999
04.	3887489	09/11/2012	M/s Bhuvneshvari Jewellers M. G. Road, Main Bazar, Bantwa, District: Junagadh, Gujarat-362620	Gold And Gold Alloys, Jewellery/Artefacts - Fineness And Marking	1417	0	0	1999
05.	3887590	09/11/2012	M/s Kanaiya Jewellers Main Bazar, Near Dr. Radiya Sir, Adityana, District: Porbandar, Gujarat-362550	Gold And Gold Alloys, Jewellery/Artefacts - Fineness And Marking	1417	0	0	1999
06.	3887691	09/11/2012	M/s Soni Amrutlal Laljibhai Momai Chowk, Maliya Hatina, District: Junagadh, Gujarat-362245	Gold And Gold Alloys, Jewellery/Artefacts - Fineness And Marking	1417	0	0	1999
07.	3887792	09/11/2012	M/s Namdlal Bhagvanji Soni V. P. Road, Behind Bus Stand, Bantwa, District: Junagadh, Gujarat-362220	Gold And Gold Alloys, Jewellery/Artefacts - Fineness And Marking	1417	0	0	1999
08.	3887893	09/11/2012	M/s Jewellery Point V. P. Road, Behind Bus Stand, Bantwa, District: Junagadh, Gujarat-362620	Gold And Gold Alloys, Jewellery/Artefacts - Fineness And Marking	1417	0	0	1999
09.	3888087	12/11/2012	M/s Trimurti Jewellers V. P. Road, Bantwa, District: Junagadh, Gujarat-362620	Gold And Gold Alloys, Jewellery/Artefacts - Fineness And Marking	1417	0	0	1999
10.	3888794	14/11/2012	M/s Durga Jewellers Omkar Complex, Chitaliya Kuva Road, Near Kalapir Gargah, Jasdan, District: Rajkot, Gujarat-360050	Gold And Gold Alloys, Jewellery/Artefacts - Fineness And Marking	1417	0	0	1999

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
11.	3888895	14/11/2012	M/s. Ashirvad Jewellers Shop No.9, Dr. Kelkar Road, District : Diu, Daman & Diu-362520	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking	1417	0	0	1999
12.	3888996	14/11/2012	M/s. Kalyan Jewellers 1,101 to 302, . Orbit Enclave, Dr. Yagnik Road, District : Rajkot, Gujarat-360002	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking	1417	0	0	1999
13.	3889089	14/11/2012	M/s. Saifee Jewellers Kitabi Bulding, Gujari Bazar Main Road, District: Rajkot, Gujarat-360001	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking	1417	0	0	1999
14.	3890175	23/11/2012	M/s. Ganesh Steel Rolling Mill Plot No. 65, GIDC Chitra, Bhavnagar, District : Bhavnagar, Gujarat-364004	High Strength Deformed Steel Bars and Wires for Concrete Reinforcement	1786	0	0	2008
15.	3890276	23/11/2012	M/s. Shree Ganesh Steel Industries Block No. 58/1, Behind Sitaram Weighbridge, Talaja Road, Mamsa, Taluka Ghogha, District : Bhavnagar, Gujarat-364001	High Strength Deformed Steel Bars and Wires for Concrete Reinforcement	1786	0	0	2008
16.	3890377	23/11/2012	M/s. Sardar Steel Industries Survey No. 176/1, Sihor Ahmedabad Highway, GIDC IV, Ghanghli, Taluka Sihor, District : Bhavnagar, Gujarat-364240	High Strength Deformed Steel Bars and Wires for Concrete Reinforcement	1786	0	0	2008
17.	3891581	26/11/2012	M/s. Lucky Steel Industries (Rolling Mill Division) Plot No. 206-A, Vartej Budhel Road, Vartej, District: Bhavnagar, Gujarat-364060	High Strength Deformed Steel Bars and Wires for Concrete Reinforcement	1786	0	0	2008
18.	3892482	29/11/2012	M/s. Tulsi Beverages Vinayak Park Highway Road, Kathiyawad Hotel, Halvad, District : Surendranagar, Gujarat-363330	Packaged Drinking Water	14543	0	0	2004

[No. CMD/13:11]

M. RADHAKRISHNA, Scientist 'F' & Head

नई दिल्ली, 24 जनवरी, 2013

का. आ. 227.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं:—

अनुसूची

क्रम सं.	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 15947-1 : 2012 कंक्रीट के डिलिवरी पाइपलाइन भाग 1 विशिष्टि	—	30 नवम्बर, 2012
2.	आईएस 13291 : 2012 कंक्रीट के ब्लॉक निर्माण हेतु मशीनें—सामान्य अपेक्षाएं (पहला पुनरीक्षण)	आईएस 13291 : 1992	30 नवम्बर, 2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं । भारतीय मानकों को http://www.standardsbis.in द्वारा इंटरनैट पर खरीदा जा सकता है ।

[संदर्भ एम.ई.डी./जी-2:1]

तेजवीर सिंह, वैज्ञानिक 'एफ' एवं प्रमुख (यांत्रिक इंजीनियरिंग)

New Delhi, the 24th January, 2013

S.O. 227.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. and Year of the Indian Standards Established	No. and Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS 15947 (Part 1) : 2012 Concrete Delivery Pipeline : Part 1 Specification	—	30th November, 2012
2.	IS 13291 : 2012 Concrete Block Makin Machines - General Requirements (Frst revision)	IS 13291 : 1992	30th November, 2012

Copy of these Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bengalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram. On-line purchase of Indian Standard can be made at : http://www.standardsbis.in.

[Ref. MED/G-2 :1]

T. V. SINGH, Scientist 'F' & Head (Mechanical Engineering)

2896/13-3

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 18 जनवरी, 2013

का. आ. 228.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में पेट्रोलियम और प्राकृतिक गैस मंत्रालय के प्रशासनिक नियंत्रणाधीन सार्वजनिक क्षेत्र के उपक्रमों के निम्नलिखित कार्यालयों को, जिनके 80 या अधिक प्रतिशत कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. ऑयल एण्ड नेचुरल गैस कार्पोरेशन लिमिटेड

(i) ओएनजीसी अकादमी, ओएनजीसी,
कौलागढ़ रोड, देहरादून-248195

(ii) वेधन प्रौद्योगिकी संस्थान, ओएनजीसी,
कौलागढ़ रोड, देहरादून-248195

(iii) केशव देव मालवीय पेट्रोलियम अन्वेषण संस्थान, ओएनजीसी,
कौलागढ़ रोड, देहरादून-248195

(iv) जियोपिक ओएनजीसी, संस्थान,
कौलागढ़ रोड, देहरादून, उत्तराखंड-248195

2. इंडियन ऑयल कार्पोरेशन लिमिटेड

(i) इंडियन ऑयल कार्पोरेशन लिमिटेड (विपणन प्रभाग),
अजमेर मंडल कार्यालय, ई-83, शास्त्री नगर, लोहगल रोड,
अजमेर-305006

(ii) इंडियन ऑयल कार्पोरेशन लिमिटेड (विपणन प्रभाग),
लोनी एलपीजी संयंत्र, बन्थला-लोनी,
गाजियाबाद, पिन-201102

(iii) इंडियन ऑयल कार्पोरेशन लिमिटेड (विपणन प्रभाग),
इंडियन एयर फोर्स, जोधपुर एएफएस,
जोधपुर, पिन-342011

[फा. सं. 11011/1/2012 (हिन्दी)]
डी. एस. रावत, संयुक्त निदेशक (रा. भा.)

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 18th January, 2013

S. O. 228.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the Public Sector Undertakings under the administrative control of the Ministry of Petroleum and Natural Gas, in which 80 or more per cent of the staff have acquired working knowledge of Hindi :—

1. Oil and Natural Gas Corporation Limited

(i) ONGC Academy, ONGC Kaulagarh Road,
Dehradun-248195

(ii) Institute of Drilling Technology,
ONGC Kaulagarh Road,
Dehradun-248195

(iii) KDMIPE,
ONGC Kaulagarh Road,
Dehradun-248195

(iv) GEOPIC, ONGC Kaulagarh Road,
Dehradun-248195

2. Indian Oil Corporation Limited

(i) Indian Oil Corporation Limited
(Marketing Division) Ajmer Division Office
E-83, Shastri Nagar, Lohgal Road,
Ajmer- 305006

(ii) Indian Oil Corporation Limited
(Marketing Division) Loni LPG Pland,
Banthala-Loni, Ghaziabad, Pin-201102.

(iii) Indian Oil Corporation Limited
(Marketing Division) Indian Air Force,
Jodhpur AFS, Jodhpur, Pin-342011.

[F. No. 11011/1/2012 (Hindi)]

D. S. RAWAT, Jt. Director (OL)

नई दिल्ली, 29 जनवरी, 2013

का. आ. 229.—तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा (3) की उपधारा (3) (ग) द्वारा प्रदत्त की गई शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार निम्नलिखित अधिकारियों को तेल उद्योग विकास बोर्ड के सदस्य के रूप में, उनके नाम के सामने दर्शायी गई अवधि के लिए या अगले आदेश जारी होने तक या जो भी पहले हो, नियुक्त/पुर्नियुक्त करती है :—

क्रम सं.	अधिकारी का नाम	से	तक
(1)	(2)	(3)	(4)
1.	श्री आर. के. सिंह, अध्यक्ष एवं प्रबंध निदेशक, भारत पेट्रोलियम कार्पोरेशन लिमिटेड	08-12-2012	30-09-2013
2.	श्री इन्द्रजीत पाल, सचिव, रसायन एवं पेट्रोरसायन विभाग	22-01-2013	30-09-2014

[फा. सं. जी-35012/2/91-वित्त-II]

ओ. पी. बनवारी, उप-सचिव

New Delhi, the 29th January, 2013

S. O. 229.—In exercise of the powers conferred by Sub-section (3)(c) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints/re-appoints the following officers as a member of the Oil Industry Development Board for the period shown against their names or until further orders, whichever is earlier :—

Sl. No.	Name of the officer	From	To
(1)	(2)	(3)	(4)
1.	Shri R. K. Singh, CMD, BPCL	08-12-2012	30-09-2013
2.	Shri Indrajit Pal, Secretary, Deptt. of Chemicals and Petrochemicals	22-01-2013	30-09-2014

[F. No. G-35012/2/91-Fin.-II]

O. P. BANWARI, Dy. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 31 जनवरी, 2013

का.आ. 230.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप(उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि मे जो इस से उपाबद्ध अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाऐ जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू. बी. सी. एस. (प्रशासनिक) सेवानिवृत्त सक्षम प्राधिकारी, पारादीप – हल्दिया – दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप – हल्दिया – बरौनी पाइपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्या, आन्दुल–मौरी, मौरीग्राम हावड़ा–711 302 (पश्चिम बंगाल) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

पुलिस स्टेशन : वज् वज् — I जिला : दक्षिण 24 परगणा राज्य : पश्चिम बंगाल					
क्रम सं.	मौजा का नाम	खसरा सं. (आर.एस.)	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मी.
1	2	3	4	5	6
1	आछिपुर — 44	596	00	00	70
		891	00	02	40
		893	00	01	60
		890	00	00	60
		882	00	03	40
		885	00	00	30
		881	00	02	10
		880	00	02	40
		879	00	02	80
		878	00	02	60
		877	00	00	20
		874	00	04	90
		873	00	02	00
		872	00	04	30
		871	00	02	60
		645	00	00	20
2	मोउखाली — 39	254	00	06	40
		253/531	00	02	50
		256	00	00	20
		253	00	00	20
		253/586	00	08	40
		251	00	03	60
		31	00	07	80
		250	00	00	40
		32	00	01	70
		33	00	10	90
		25	00	00	60
		22	00	00	20
		36	00	14	70
		37	00	02	70

1	2	3	4	5	6
	मौउखाली – 39	42	00	02	60
	जारी.....	49	00	04	50
		48	00	05	70
		47	00	04	70
		66	00	02	00
		67	00	04	40
		68	00	04	70
		69	00	13	20
		76	00	07	80
		91	00	00	20
		89	00	02	70
		77	00	05	10
		88	00	08	90
		37 / 547	00	00	30
		87	00	00	20
		124	00	01	10
		126 / 555	00	00	20
		125	00	02	00
		86	00	07	60
		85	00	00	20
		83	00	14	60
		82	00	01	30
3	उत्तर रामचन्द्रपुर – 37	989 / 1118	00	06	60
		989 / 1115	00	00	90
		1015	00	03	00
		989	00	04	50
		990	00	06	50
		1014	00	05	30
		1012	00	01	00
		1011	00	02	20
		1010	00	02	10
		1009	00	04	00
		1008	00	07	00
		1007	00	03	70

1	2	3	4	5	6
	उत्तर रामचन्द्रपुर – 37 जारी....	1026	00	00	70
		1002	00	04	30
		1027	00	06	00
		1028	00	05	10
		1029	00	02	10
		888	00	00	20
		911	00	00	20
		900	00	08	90
		899	00	00	90
		901	00	00	80
		898	00	03	50
		897	00	04	40
		895	00	00	30
		896	00	04	50
		890	00	03	30
		892	00	00	20
		891	00	08	10
		875	00	00	70
		859	00	00	20
		860	00	08	50
		861	00	07	40
		871	00	02	80
		872	00	02	50
		873	00	00	20
4	निश्चिन्तपुर – 35	1289/1888	00	01	00
		1240	00	01	40
		1275	00	09	10
		1276	00	02	60
		1274	00	07	80
		1301	00	00	20
		1285	00	05	80
		1286	00	04	90
		1293	00	03	50
		1294	00	03	30

1	2	3	4	5	6
	निश्चिन्तपुर – 35	1295	00	04	20
	जारी....	1311	00	04	50
		1291	00	00	20
		1312	00	01	70
		1313/1889	00	04	00
		1769	00	04	50
		1770	00	09	80
		1771	00	00	40
		1783	00	07	30
		1784	00	00	40
		1785	00	00	20
		1781	00	00	20
		1782	00	04	90
		1780	00	01	10
		1803	00	14	40
		1827	00	00	20
		1821	00	06	30
		1820	00	10	10
		1824	00	00	50
		1825	00	00	60
		1826	00	01	50
		1845	00	02	90
5	जामालपुर – 34	3	00	00	30
		2	00	16	20
		8	00	10	90
		9	00	11	20
		11/934	00	02	60
		11	00	00	30
		12	00	13	80
		23	00	08	30
		27	00	01	10
		42/947	00	09	40
		42	00	11	60
		41	00	13	60

1	2	3	4	5	6
	जामालपुर – 34	41 / 946	00	01	80
	जारी.....	37	00	02	30
		40 / 944	00	03	10
		38	00	01	80
		40	00	02	30
		217	00	04	20
		215	00	03	10
		218 / 1021	00	10	40
		219	00	02	40
		218	00	02	00
		227	00	08	10
		228	00	03	50
		229	00	00	20
		230	00	03	20
		232	00	02	90
		234	00	02	60
		235	00	02	70
		236	00	00	20
		237	00	03	60
		239	00	03	20
		240	00	03	60
		247	00	04	90
		246	00	04	70
		255	00	03	30
		245	00	00	20
		257 / 1026	00	00	70
		257 / 1027	00	02	00
		895	00	00	40
		1028	00	05	40
		257	00	06	80
		257 / 1030	00	03	20
		257 / 1031	00	02	90
		726	00	07	50
		730	00	00	20

1	2	3	4	5	6
	जामालपुर – 34 जारी.....	727	00	04	60
		731	00	06	60
		731/1187	00	04	80
		733	00	06	50
		1191	00	01	90
6	बुइता – 33	666/1542	00	00	70
		666	00	08	40
		665	00	02	30
		663	00	19	10

[फा सं. आर-25011/15/2012-ओ.आर-I]

पवन कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 31st January, 2013

S.O. 230.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.)Retd.Competent Authority Paradip – Haldia –Durgapur LPG Pipeline & Augmentation of Paradip – Haldia –Barauni Pipeline Project, P.O,Duillya, Andul - Mouri, Mourigram,Howrah, 711-302 (West Bengal)

SCHEDULE

P.S : BUDGE BUDGE - I DISTRICT : SOUTH 24 PARGANAS STATE : WEST BENGAL					
Sl. No.	Name of the Mouza	Khasra No. (R.S.)	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
1	ACHHIPUR - 44	596	00	00	70
		891	00	02	40
		893	00	01	60
		890	00	00	60
		882	00	03	40
		885	00	00	30
		881	00	02	10
		880	00	02	40
		879	00	02	80
		878	00	02	60
		877	00	00	20
		874	00	04	90
		873	00	02	00
		872	00	04	30
		871	00	02	60
		645	00	00	20
2	MOUKHALI - 39	254	00	06	40
		253/53	00	02	50
		256	00	00	20
		253	00	00	20
		253/586	00	08	40
		251	00	03	60
		31	00	07	30
		250	00	00	40
		32	00	01	70
		33	00	10	90
		25	00	00	60
		22	00	00	20
		36	00	14	70
		37	00	02	70

1	2	3	4	5	6
	MOUKHALI - 39	42	00	02	60
	Contd.....	49	00	04	50
		48	00	05	70
		47	00	04	70
		66	00	02	00
		67	00	04	40
		68	00	04	70
		69	00	13	20
		76	00	07	80
		91	00	00	20
		89	00	02	70
		77	00	05	10
		88	00	08	90
		87/547	00	00	30
		87	00	00	20
		124	00	01	10
		126/555	00	00	20
		125	00	02	00
		86	00	07	60
		85	00	00	20
		83	00	14	60
		82	00	01	30
3	UTTAR RAMCHANDRAPUR 37	989/1118	00	06	60
		989/1115	00	00	90
		1015	00	03	00
		989	00	04	50
		990	00	06	50
		1014	00	05	30
		1012	00	01	00
		1011	00	02	20
		1010	00	02	10
		1009	00	04	00
		1008	00	07	00
		1007	00	03	70

1	2	3	4	5	6
	UTTAR RAMCHANDRAPUR 37	1026	00	00	70
	Contd.....	1002	00	04	30
		1027	00	06	00
		1028	00	05	10
		1029	00	02	10
		888	00	00	20
		911	00	00	20
		900	00	08	90
		899	00	00	90
		901	00	00	80
		898	00	03	50
		897	00	04	40
		895	00	00	30
		896	00	04	50
		890	00	03	30
		892	00	00	20
		891	00	08	10
		875	00	00	70
		859	00	00	20
		860	00	08	50
		861	00	07	40
		871	00	02	80
		872	00	02	50
		873	00	00	20
4	NISCHINTAPUR - 35	1289/1888	00	01	00
		1240	00	01	40
		1275	00	09	10
		1276	00	02	60
		1274	00	07	80
		1301	00	00	20
		1285	00	05	80
		1286	00	04	90
		1293	00	03	50
		1294	00	03	30

1	2	3	4	5	6
	NISCHINTAPUR - 35	1295	00	04	20
	Contd.....	1311	00	04	50
		1291	00	00	20
		1312	00	01	70
		1313/1889	00	04	00
		1769	00	04	50
		1770	00	09	80
		1771	00	00	40
		1783	00	07	30
		1784	00	00	40
		1785	00	00	20
		1781	00	00	20
		1782	00	04	90
		1780	00	01	10
		1803	00	14	40
		1827	00	00	20
		1821	00	06	30
		1820	00	10	10
		1824	00	00	50
		1825	00	00	60
		1826	00	01	50
		1845	00	02	90
5	JAMALPUR - 34	3	00	00	30
		2	00	16	20
		8	00	10	90
		9	00	11	20
		11/934	00	02	60
		11	00	00	30
		12	00	13	80
		23	00	08	30
		27	00	01	10
		42/947	00	09	40
		42	00	11	60
		41	00	13	60

1	2	3	4	5	6
	JAMALPUR - 34	41/946	00	01	80
	Contd.....	37	00	02	30
		40/944	00	03	10
		38	00	01	80
		40	00	02	30
		217	00	04	20
		215	00	03	10
		218/1021	00	10	40
		219	00	02	40
		218	00	02	00
		227	00	08	10
		228	00	03	50
		229	00	00	20
		230	00	03	20
		232	00	02	90
		234	00	02	60
		235	00	02	70
		236	00	00	20
		237	00	03	60
		239	00	03	20
		240	00	03	60
		247	00	04	90
		246	00	04	70
		255	00	03	30
		245	00	00	20
		257/1026	00	00	70
		257/1027	00	02	00
		895	00	00	40
		1028	00	05	40
		257	00	06	80
		257/1030	00	03	20
		257/1031	00	02	90
		726	00	07	50
		730	00	00	20

1	2	3	4	5	6
	JAMALPUR - 34	727	00	04	60
	Contd.....	731	00	06	60
		731/1187	00	04	80
		733	00	06	50
		1191	00	01	90
6	BUITA - 33	666/1542	00	00	70
		666	00	08	40
		665	00	02	30
		663	00	19	10

[F. No. R-25011/15/2012-O.R.-I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का.आ. 231.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप(उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि मे जो इस से उपाबद्व अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाऐ जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियॉ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू. बी. सी. एस. (प्रशासनिक) सेवानिवृत्त सक्षम प्राधिकारी, पारादीप – हल्दिया – दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप – हल्दिया – बरौनी पाइपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्या, आन्दुल–मौरी, मौरीग्राम हावड़ा–711 302 (पश्चिम बंगाल) को लिखित रुप में आक्षेप भेज सकेगा।

अनुसूची

पुलिस स्टेशन : सिंगूर		जिला : हूगली	राज्य : पश्चिम बंगाल		
क्रम सं.	मौजा का नाम	खसरा सं.	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मी.
1	2	3	4	5	6
1	श्रीरामपुर –66	3463	00	00	30
		3464	00	00	60
		3466	00	01	50
		3423	00	02	80
		3422	00	03	10

[फा. सं. आर-25011/5/2012-ओ.आर.-I]

पवन कुमार, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 231.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.) Retd. Competent Authority Paradip – Haldia –Durgapur LPG Pipeline & Augmentation of Paradip – Haldia –Barauni Pipeline Project, P.O,Duillya, Andul - Mouri, Mourigram,Howrah, 711-302 (West Bengal)

SCHEDULE

P. S : SINGUR		DISTRICT : HOOGHLY			STATE : WEST BENGAL
Sl. No.	Name of the Mouza	Khasra No.	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
1	SRIRAMPUR -66	3463	00	00	30
		3464	00	00	60
		3466	00	01	50
		3423	00	02	80
		3422	00	03	10

[F. No. R-25011/5/2012-O.R.-I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का.आ. 232.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप(उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि मे जो इस से उपाबद्व अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाऐ जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियॉ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू. बी. सी. एस. (प्रशासनिक) सेवानिवृत्त सक्षम प्राधिकारी, पारादीप – हल्दिया – दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप – हल्दिया – बरौनी पाइपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्या, आन्दुल–मौरी, मौरीग्राम हावड़ा–711 302 (पश्चिम बंगाल) को लिखित रुप में आक्षेप भेज सकेगा।

अनुसूची

पुलिस स्टेशन : बागनान -I		जिला : हावड़ा	राज्य : पश्चिम बंगाल		
क्रम सं.	मौजा का नाम	खसरा सं. (आर.एस.)	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मी.
1	2	3	4	5	6
1	हिजलक – 61	48	00	03	50
		49	00	04	40
		45	00	01	90
		50	00	00	40
		04	00	02	20
		54	00	00	60
		55	00	06	80
		101	00	01	90
		100	00	07	10
		94	00	07	70
		89	00	00	90
		78	00	09	70
		88	00	00	50
		81	00	00	30
		80	00	03	20
		264	00	02	60
		265	00	02	50
		268	00	02	30
		269	00	03	10
		270	00	02	20
		271	00	00	20
		272	00	00	40
		270 / 1499	00	01	70
		274	00	00	60
		275	00	04	00
		276	00	03	70
		278	00	01	10
		277 / 1500	00	01	00
		277	00	01	60
		287	00	02	20

1	2	3	4	5	6
	हिजलक – 61	330	00	00	40
	जारी.....	329	00	02	90
		288	00	00	30
		327	00	05	30
		289	00	00	20
		290	00	00	20
		326	00	01	50
		325	00	02	00
		588	00	10	50
		587	00	00	20
		593	00	05	20
		598	00	05	00
		599	00	04	10
		1379	00	00	20
		601	00	05	40
		1378	00	00	20
		602	00	05	90
		1354	00	03	70
		1356	00	00	30
		1355	00	03	60
		1353	00	00	50
		1352	00	03	70
		1361	00	02	20
		1350	00	02	10
		570	00	01	00
		1349	00	02	90
		1349 / 1494	00	00	20
		1331	00	04	30
		866	00	01	30
		1330	00	02	40
		1323 / 1496	00	01	30
		1324	00	01	90
		1325	00	00	20
		1323	00	03	20

1	2	3	4	5	6
2	खादिनान – 59	1154	00	00	20
		1153	00	00	90
		1139	00	03	30
		1138	00	02	40
		1137	00	01	00
		1134	00	01	10
		1111	00	02	70
		267	00	03	80
		268	00	02	30
		269	00	02	20
		270	00	00	20
		271	00	06	10
		272	00	04	60
		301 / 1599	00	00	40
		301	00	00	50
		1592	00	03	20
		302	00	05	60
		305	00	01	50
		306	00	00	40
		307	00	00	70
		315	00	09	70
		317	00	01	30
		319	00	01	00
		323	00	01	20
		322	00	03	70
		387	00	03	20
		388	00	02	00
		389	00	01	20
		394	00	00	80
		1022	00	05	10
		1012	00	06	20
		1003	00	04	40
		1006	00	00	20
		1004	00	02	60

1	2	3	4	5	6
	खादिनान – 59	992	00	00	80
	जारी.....	991	00	00	90
		985 / 1638	00	00	20
		986	00	02	10
		990	00	00	20
		989	00	01	90
		987	00	01	60
		1023	00	00	40
		971	00	00	30
		972	00	01	00
		970	00	03	30
		1636	00	02	30
		968	00	00	60
		541	00	00	50
		966	00	03	80
		809	00	03	00
		810	00	11	10
		811	00	00	20
		812	00	02	90
		780	00	00	60
		813	00	10	00
		754	00	00	20
		819	00	02	70
		820	00	00	50
		752	00	00	30
		751	00	03	40
		748	00	01	30
		747	00	01	70
		746	00	03	20
		745	00	07	80
		730	00	02	90
		729	00	04	50
		228	00	03	50
		714	00	00	80

1	2	3	4	5	6
	खादिनान – 59 (जारी.....)	715	00	01	70
3	बागनान – 60	166	00	01	70
		167	00	02	20
		176	00	03	10
		177	00	00	50
		164	00	04	10
		165	00	07	20
		163	00	01	50
		65	00	01	70
		64	00	07	30
		63	00	02	30
		70	00	02	70
		71	00	00	50
		72	00	00	20
		73	00	06	30
		74	00	02	50
		1370	00	02	30
		1371	00	02	00
		622	00	04	00
		623	00	01	30
		53	00	01	20
		624	00	00	90
		625	00	00	80
		52	00	02	00
		51	00	03	80
		636	00	08	10
		665	00	03	70
		664	00	00	40
		666	00	02	00
		651	00	00	30
		667	00	01	00
		667/1441	00	01	80
4	चन्द्रपुर – 58	106	00	10	50
		105	00	02	30

1	2	3	4	5	6
	चन्द्रपुर – 58	102	00	00	20
	जारी.....	104	00	02	00
		103	00	01	80
		100	00	05	10
		99	00	02	70
		93	00	05	30
		93 / 1196	00	06	10
		91	00	07	00
		154 / 1191	00	00	80
		154 / 1989	00	04	00
		88	00	02	70
		86	00	03	80
		78	00	03	70
		156	00	01	10
		157	00	03	60
		77	00	01	20
		76	00	02	70
		72	00	04	40
		68	00	03	80
		66	00	01	60
		65	00	01	70
		64	00	04	40
		191	00	02	40
		190	00	06	40
		187	00	01	60
		188	00	02	30
		62	00	02	00
		61	00	02	40
		60	00	01	10
		203	00	00	20
		200	00	02	80
		201 / 1156	00	01	90
		198 / 1155	00	00	40
		201	00	00	60

1	2	3	4	5	6
	चन्द्रपुर – 58	198	00	00	70
	जारी.....	209	00	03	40
		195	00	09	00
5	गोपालपुर – 41	281	00	00	60
		484	00	03	00
		486	00	01	40
		490	00	03	40
		489	00	02	90
		493	00	03	00
		494	00	02	80
		496	00	02	20
		497	00	02	30
		498	00	04	00
		499	00	03	00
		500	00	03	58
		501	00	01	18
		480	00	00	20
6	मुरगाबेड़िया – 55	1701	00	00	30
		1702	00	01	80
		1649(दामोदर नदी)	00	07	70
		1697	00	00	60
		1691	00	01	20
		1692	00	01	10
		1539	00	00	20
		1540	00	04	50
		1537	00	00	60
		1528	00	03	20
		1562	00	00	20
		1561	00	01	10
		1560	00	02	40
		1559	00	02	20
		1558	00	00	30
		1566	00	00	90
		1567	00	04	80

1	2	3	4	5	6
	मुरगाबेडिया – 55	1569	00	00	30
	जारी.....	1568	00	04	70
		1574	00	02	60
		1575	00	01	30
		1582	00	04	70
		1576	00	00	20
		1583	00	00	20
		1587	00	02	40
		1586	00	03	10
		1588	00	03	20
		1468	00	00	80
		1592	00	05	70
		1593	00	01	40
		1594	00	01	80
		1595	00	00	70
		1596	00	00	70
		1597	00	00	20
		1598	00	00	90
		1599	00	01	30
		1601	00	00	30

[फा. सं. आर-25011/22/2012-ओ.आर.-I]

पवन कुमार, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 232.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.)Retd.Competent Authority Paradip – Haldia –Durgapur LPG Pipeline & Augmentation of Paradip – Haldia –Barauni Pipeline Project, P.O,Duillya, Andul - Mouri, Mourigram,Howrah, 711-302 (West Bengal)

SCHEDULE

P S: BAGNAN - I	DISTRICT : HOWRAH		STATE : WEST BENGAL		
Sl. No.	Name of the Mouza	Khasra No. (R.S.)	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
1	HIJLAK - 61	48	00	03	50
		49	00	04	40
		45	00	01	90
		50	00	00	40
		4	00	02	20
		54	00	00	60
		55	00	06	80
		101	00	01	90
		100	00	07	10
		94	00	07	70
		89	00	00	90
		78	00	09	70
		88	00	00	50
		81	00	00	30
		80	00	03	20
		264	00	02	60
		265	00	02	50
		268	00	02	30
		269	00	03	10
		270	00	02	20
		271	00	00	20
		272	00	00	40
		270/1499	00	01	70
		274	00	00	60
		275	00	04	00
		276	00	03	70

1	2	3	4	5	6
	HIJLAK - 61	278	00	01	10
	Contd....	277/1500	00	01	00
		277	00	01	60
		287	00	02	20
		330	00	00	40
		329	00	02	90
		288	00	00	30
		327	00	05	30
		289	00	00	20
		290	00	00	20
		326	00	01	50
		325	00	02	00
		588	00	10	50
		587	00	00	20
		593	00	05	20
		598	00	05	00
		599	00	04	10
		1379	00	00	20
		601	00	05	40
		1378	00	00	20
		602	00	05	90
		1354	00	03	70
		1356	00	00	30
		1355	00	03	60
		1353	00	00	50
		1352	00	03	70
		1361	00	02	20
		1350	00	02	10
		570	00	01	00
		1349	00	02	90
		1349/1494	00	00	20
		1331	00	04	30
		866	00	01	30
		1330	00	02	40
		1323/1496	00	01	30
		1324	00	01	90
		1325	00	00	20
		1323	00	03	20

1	2	3	4	5	6
2	KHADINAN - 59	1154	00	00	20
		1153	00	00	90
		1139	00	03	30
		1138	00	02	40
		1137	00	01	00
		1134	00	01	10
		1111	00	02	70
		267	00	03	80
		268	00	02	30
		269	00	02	20
		270	00	00	20
		271	00	06	10
		272	00	04	60
		301/1599	00	00	40
		301	00	00	50
		1592	00	03	20
		302	00	05	60
		305	00	01	50
		306	00	00	40
		307	00	00	70
		315	00	09	70
		317	00	01	30
		319	00	01	00
		323	00	01	20
		322	00	03	70
		387	00	03	20
		388	00	02	00
		389	00	01	20
		394	00	00	80
		1022	00	05	10
		1012	00	06	20
		1003	00	04	40
		1006	00	00	20
		1004	00	02	60

1	2	3	4	5	6
	KHADINAN - 59	992	00	00	80
	Contd....	991	00	00	90
		985/1638	00	00	20
		986	00	02	10
		990	00	00	20
		989	00	01	90
		987	00	01	60
		1023	00	00	40
		971	00	00	30
		972	00	01	00
		970	00	03	30
		1636	00	02	30
		968	00	00	60
		541	00	00	50
		966	00	03	80
		809	00	03	00
		810	00	11	10
		811	00	00	20
		812	00	02	90
		780	00	00	60
		813	00	10	00
		754	00	00	20
		819	00	02	70
		820	00	00	50
		752	00	00	30
		751	00	03	40
		748	00	01	30
		747	00	01	70
		746	00	03	20
		745	00	07	80
		730	00	02	90
		729	00	04	50
		228	00	03	50
		714	00	00	80

1	2	3	4	5	6
	KHADINAN - 59 (Contd....)	715	00	01	70
3	BAGNAN - 60	166	00	01	70
		167	00	02	20
		176	00	03	10
		177	00	00	50
		164	00	04	10
		165	00	07	20
		163	00	01	50
		65	00	01	70
		64	00	07	30
		63	00	02	30
		70	00	02	70
		71	00	00	50
		72	00	00	20
		73	00	06	30
		74	00	02	50
		1370	00	02	30
		1371	00	02	00
		622	00	04	00
		623	00	01	30
		53	00	01	20
		624	00	00	90
		625	00	00	80
		52	00	02	00
		51	00	03	80
		636	00	08	10
		665	00	03	70
		664	00	00	40
		666	00	02	00
		651	00	00	30
		667	00	01	00
		667/1441	00	01	80
4	CHANDRAPUR - 58	106	00	10	50
		105	00	02	30

1	2	3	4	5	6
	CHANDRAPUR - 58	102	00	00	20
	Contd....	104	00	02	00
		103	00	01	80
		100	00	05	10
		99	00	02	70
		93	00	05	30
		93/1196	00	06	10
		91	00	07	00
		154/1191	00	00	80
		154/1989	00	04	00
		88	00	02	70
		86	00	03	80
		78	00	03	70
		156	00	01	10
		157	00	03	60
		77	00	01	20
		76	00	02	70
		72	00	04	40
		68	00	03	80
		66	00	01	60
		65	00	01	70
		64	00	04	40
		191	00	02	40
		190	00	06	40
		187	00	01	60
		188	00	02	30
		62	00	02	00
		61	00	02	40
		60	00	01	10
		203	00	00	20
		200	00	02	80
		201/1156	00	01	90
		198/1155	00	00	40
		201	00	00	60

1	2	3	4	5	6
	CHANDRAPUR - 58	198	00	00	70
	Contd....	209	00	03	40
		195	00	09	00
5	GOPALPUR - 41	281	00	00	60
		484	00	03	00
		486	00	01	40
		490	00	03	40
		489	00	02	90
		493	00	03	00
		494	00	02	80
		496	00	02	20
		497	00	02	30
		498	00	04	00
		499	00	03	00
		500	00	03	58
		501	00	01	18
		480	00	00	20
6	MURGABERIA - 55	1701	00	00	30
		1702	00	01	80
		1649 (Damodar River)	00	07	70
		1697	00	00	60
		1691	00	01	20
		1692	00	01	10
		1539	00	00	20
		1540	00	04	50
		1537	00	00	60
		1528	00	03	20
		1562	00	00	20
		1561	00	01	10
		1560	00	02	40
		1559	00	02	20
		1558	00	00	30
		1566	00	00	90
		1567	00	04	80

1	2	3	4	5	6
	MURGABERIA - 55	1569	00	00	30
	Contd...	1568	00	04	70
		1574	00	02	60
		1575	00	01	30
		1582	00	04	70
		1576	00	00	20
		1583	00	00	20
		1587	00	02	40
		1586	00	03	10
		1588	00	03	20
		1468	00	00	80
		1592	00	05	70
		1593	00	01	40
		1594	00	01	80
		1595	00	00	70
		1596	00	00	70
		1597	00	00	20
		1598	00	00	90
		1599	00	01	30
		1601	00	00	30

[F. No. R-25011/22/2012-O.R.-I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का.आ. 233.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप(उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि मे जो इस से उपाबद्व अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाऐ जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्व है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है,

इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू. बी. सी. एस. (प्रशासनिक) सेवानिवृत्त सक्षम प्राधिकारी, पारादीप – हल्दिया – दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप – हल्दिया – बरौनी पाइपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्या, आन्दुल–मौरी, मौरीग्राम हावड़ा–711 302 (पश्चिम बंगाल) को लिखित रुप में आक्षेप भेज सकेगा।

अनुसूची

पुलिस स्टेशन : बागनान - II		जिला : हावड़ा	राज्य : पश्चिम बंगाल		
कम सं.	मौजा का नाम	खसरा सं. (आर.एस.)	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मी.
1	2	3	4	5	6
1	नाउपाला – 25	1661	00	15	20
		1660	00	00	80
		1666	00	06	90
		1023	00	00	20
		1021	00	01	00
		1020	00	00	80
		1019	00	00	30
		1000	00	00	40
		976	00	00	30
		1859	00	00	70
		1858	00	00	40
		418	00	01	00
		419	00	00	40
		420	00	01	00
		421	00	03	80
		422	00	02	00
		1778	00	01	20
		436	00	03	20
		521	00	06	10
		523	00	00	50
		525	00	08	60
		524	00	00	40
		531	00	02	00
		530	00	03	60
		528	00	00	30
		527	00	00	30
		529	00	07	30
		638	00	02	90
		637	00	01	90
		636	00	11	20

1	2	3	4	5	6
	नाउपाला – 25	635	00	11	50
	जारी.....	634	00	00	30
		620	00	02	70
		619	00	04	20
		618	00	00	80
		616	00	03	20
		617	00	02	10
		609	00	05	40
		608	00	01	30
		713	00	00	60
		729	00	05	80
		728	00	02	40
		730	00	02	10
		727	00	02	50
		726	00	02	80
		725	00	06	50
		1766	00	00	70
		723	00	03	00
		741	00	02	60
		740	00	04	00
		742	00	02	50
		743	00	00	20
		800	00	01	90
		805	00	01	10
		803	00	01	20
		941	00	01	00
2	चक कमला – 23	02	00	00	20
		01	00	05	60
		05	00	01	50
		06	00	01	60
		08	00	01	10
		09	00	00	20
3	मेल्लक – 20	1424	00	01	50
		1426	00	03	40

1	2	3	4	5	6
	मेल्लक – 20	1425	00	02	40
	जारी.....	2235	00	01	20
		1427	00	01	30
		1428	00	01	50
		2231	00	06	30
		1439	00	00	50
		2230	00	04	70
		2208	00	00	70
		2207	00	00	50
		2229	00	00	30
		1456	00	02	20
		2210	00	00	50
		2211	00	01	10
		2212	00	00	50
		2213	00	01	00
		2202	00	01	00
		2214	00	04	80
		2195	00	09	90
		2196	00	03	40
		2197	00	01	50
		2189	00	03	30
		2165	00	01	10
		2188	00	03	70
		2169	00	01	80
		2171	00	00	20
		2170	00	04	10
		2168	00	01	40
		2167	00	01	80
		2149	00	00	20
		2147	00	07	50
		2148	00	03	90
		2146	00	00	40
		2145	00	03	50
		2144	00	01	30

1	2	3	4	5	6
	मेल्लक – 20	2143/2303	00	00	30
	जारी.....	1982	00	01	90
		1981	00	00	40
		1973	00	02	40
		1978	00	00	70
		1977	00	01	10
		1976	00	01	90
		1975	00	02	50
		1974	00	02	70
		1969	00	00	20
		1972	00	01	70
		1971	00	13	30
		1970	00	02	50
		1967	00	00	40
		1965	00	00	40
4	आषाड़िया – 21	144	00	00	40
		138	00	07	90
		137	00	01	80
		136	00	02	90
		135	00	03	90
		134	00	01	10
		133	00	00	20
		16	00	05	70
		25	00	02	00
		24	00	00	20
		17	00	01	50
		23	00	03	70
		22	00	01	40
		35	00	01	30
		34	00	00	20
		36	00	00	80
		37	00	08	10
		403	00	00	50
		94	00	00	20

1	2	3	4	5	6
	आषाड़िया – 21	390	00	06	00
	जारी.....	41	00	01	80
		42	00	05	80
		49	00	02	80
		51	00	00	70
		52	00	00	70
5	ईश्वरीपुर – 34	04	00	01	00
		05	00	00	20
		30	00	02	30
		392	00	01	10
		07	00	01	00
		08	00	06	90
		09	00	03	00
		10	00	03	10
		11	00	10	50
		13	00	09	50
		15	00	04	60
		16	00	00	20
		17	00	01	40
		18	00	00	20
		19	00	01	50
		14	00	03	60
		145	00	00	20
		01	00	01	10
6	बरून्द – 32	161	00	03	50
		159	00	06	90
		157	00	04	00
		153	00	12	40
		138	00	10	10
		135	00	01	10
		130	00	01	20
		131	00	00	80
		132	00	02	70
		127	00	00	70

1	2	3	4	5	6
	बरून्द – 32	125	00	03	70
	जारी.....	122	00	03	20
		116	00	00	80
		115	00	02	90
		111	00	04	30
		103	00	08	70
		102	00	05	60
		96	00	04	70
		95	00	00	50
		93	00	00	70

[फा. सं. आर-25011/22/2012-ओ.आर.-I]

पवन कुमार, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 233.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.)Retd.Competent Authority Paradip – Haldia –Durgapur LPG Pipeline & Augmentation of Paradip – Haldia –Barauni Pipeline Project, P.O,Duillya, Andul - Mouri, Mourigram,Howrah, 711-302 (West Bengal)

SCHEDULE

P S: BAGNAN - II DISTRICT : HOWRAH STATE : WEST BENGAL					
Sl. No.	Name of the Mouza	Khasra No. (R.S.)	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
1	NAUPALA - 25	1661	00	15	20
		1660	00	00	80
		1666	00	06	90
		1023	00	00	20
		1021	00	01	00
		1020	00	00	80
		1019	00	00	30
		1000	00	00	40
		976	00	00	30
		1859	00	00	70
		1858	00	00	40
		418	00	01	00
		419	00	00	40
		420	00	01	00
		421	00	03	80
		422	00	02	00
		1778	00	01	20
		436	00	03	20
		521	00	06	10
		523	00	00	50
		525	00	08	60
		524	00	00	40
		531	00	02	00
		530	00	03	60
		528	00	00	30
		527	00	00	30
		529	00	07	30
		638	00	02	90
		637	00	01	90
		636	00	11	20

1	2	3	4	5	6
	NAUPALA - 25	635	00	11	50
	Contd....	634	00	00	30
		620	00	02	70
		619	00	04	20
		618	00	00	80
		616	00	03	20
		617	00	02	10
		609	00	05	40
		608	00	01	30
		713	00	00	60
		729	00	05	80
		728	00	02	40
		730	00	02	10
		727	00	02	50
		726	00	02	80
		725	00	06	50
		1766	00	00	70
		723	00	03	00
		741	00	02	60
		740	00	04	00
		742	00	02	50
		743	00	00	20
		800	00	01	90
		805	00	01	10
		803	00	01	20
		941	00	01	00
2	CHAK KAMALA - 23	02	00	00	20
		01	00	05	60
		05	00	01	50
		06	00	01	60
		08	00	01	10
		09	00	00	20
3	MELLAK - 20	1424	00	01	50
		1426	00	03	40

1	2	3	4	5	6
	MELLAK - 20	1425	00	02	40
	Contd....	2235	00	01	20
		1427	00	01	30
		1428	00	01	50
		2231	00	06	30
		1439	00	00	50
		2230	00	04	70
		2208	00	00	70
		2207	00	00	50
		2229	00	00	30
		1456	00	02	20
		2210	00	00	50
		2211	00	01	10
		2212	00	00	50
		2213	00	01	00
		2202	00	01	00
		2214	00	04	80
		2195	00	09	90
		2196	00	03	40
		2197	00	01	50
		2189	00	03	30
		2165	00	01	10
		2188	00	03	70
		2169	00	01	80
		2171	00	00	20
		2170	00	04	10
		2168	00	01	40
		2167	00	01	80
		2149	00	00	20
		2147	00	07	50
		2148	00	03	90
		2146	00	00	40
		2145	00	03	50
		2144	00	01	30

1	2	3	4	5	6
	MELLAK - 20	2143/2303	00	00	30
	Contd....	1982	00	01	90
		1981	00	00	40
		1973	00	02	40
		1978	00	00	70
		1977	00	01	10
		1976	00	01	90
		1975	00	02	50
		1974	00	02	70
		1969	00	00	20
		1972	00	01	70
		1971	00	13	30
		1970	00	02	50
		1967	00	00	40
		1965	00	00	40
4	ASHARIA - 21	144	00	00	40
		138	00	07	90
		137	00	01	80
		136	00	02	90
		135	00	03	90
		134	00	01	10
		133	00	00	20
		16	00	05	70
		25	00	02	00
		24	00	00	20
		17	00	01	50
		23	00	03	70
		22	00	01	40
		35	00	01	30
		34	00	00	20
		36	00	00	80
		37	00	08	10
		403	00	00	50
		94	00	00	20

1	2	3	4	5	6
	ASHARIA - 21	390	00	06	00
	Contd....	41	00	01	80
		42	00	05	80
		49	00	02	80
		51	00	00	70
		52	00	00	70
5	ISWARIPUR - 34	04	00	01	00
		05	00	00	20
		30	00	02	30
		392	00	01	10
		07	00	01	00
		08	00	06	90
		09	00	03	00
		10	00	03	10
		11	00	10	50
		13	00	09	50
		15	00	04	60
		16	00	00	20
		17	00	01	40
		18	00	00	20
		19	00	01	50
		14	00	03	60
		145	00	00	20
		01	00	01	10
6	BARUNDA-32	161	00	03	50
		159	00	06	90
		157	00	04	00
		153	00	12	40
		138	00	10	10
		135	00	01	10
		130	00	01	20
		131	00	00	80
		132	00	02	70
		127	00	00	70

1	2	3	4	5	6
	BARUNDA-32	125	00	03	70
	Contd....	122	00	03	20
		116	00	00	80
		115	00	02	90
		111	00	04	30
		103	00	08	70
		102	00	05	60
		96	00	04	70
		95	00	00	50
		93	00	00	70

[F. No. R-25011/22/2012-O.R.-I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का.आ. 234.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप(उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि मे जो इस से उपाबद्व अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाऐ जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियॉ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू. बी. सी. एस. (प्रशासनिक) सेवानिवृत्त सक्षम प्राधिकारी, पारादीप – हल्दिया – दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप – हल्दिया – बरौनी पाइपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्या, आन्दुल–मौरी, मौरीग्राम हावड़ा–711 302 (पश्चिम बंगाल) को लिखित रुप में आक्षेप भेज सकेगा।

अनुसूची

पुलिस स्टेशन : कॉकसा		जिला : वर्द्धमान	राज्य : पश्चिम बंगाल		
क्रम सं.	मौजा का नाम	खसरा सं. (एल.आर.)	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मी.
1	2	3	4	5	6
1	कॉकसा – 86	374	00	01	60
		375	00	00	20
		373	00	01	30
		376	00	03	00
		371	00	00	40
		377	00	04	90
		380	00	03	60
		379	00	02	40
		382	00	02	80
		381	00	00	20
		383	00	02	80
		384	00	00	90
		385	00	00	80
		386	00	01	20
		387	00	00	80
		388	00	01	20
		389	00	01	70
		390	00	00	70
		393	00	01	10
		392	00	00	80
		396	00	01	60
		397	00	00	50
		1088	00	09	30
		407.	00	01	40
		957	00	03	00
		1679 / 4815	00	00	60
		950	00	00	20
		951	00	03	90
		956	00	00	20
		952	00	02	00

1	2	3	4	5	6
	कॉकसा – 86	953	00	04	40
	जारी.....	948	00	00	20
		944	00	10	70
		943	00	05	40
		942	00	00	80
		941	00	01	10
		549	00	00	30
		548	00	02	80
		546	00	00	20
		547	00	02	50
		545	00	02	20
		551	00	05	30
		552	00	11	50
		554	00	01	70
		539 / 4357	00	03	00
		557	00	00	30
		558	00	03	00
		559	00	02	40
		562	00	02	20
		564	00	03	10
		567	00	14	10
		566	00	09	80
		565	00	00	20
		1558	00	02	80
		1557	00	06	30
		1560	00	01	00
		4776	00	02	10
		1566	00	03	10
		1567	00	04	10
		1576	00	02	30
		1568	00	05	00
		1569	00	03	70
		1570	00	01	60
		1507	00	00	40

1	2	3	4	5	6
	कॉकसा – 86	1513	00	00	20
	जारी.....	1510	00	00	20
		1504	00	05	10
		1511	00	00	40
		1495	00	00	20
		1496	00	02	10
		1497	00	02	10
		1492	00	01	80
		1494	00	00	20
		1493	00	00	20
		1491	00	02	10
		1490	00	00	20
		1457	00	02	50
		1458	00	00	20
		1456	00	01	20
		1459	00	04	00
		1460	00	03	20
		1222	00	07	90
		1223	00	00	90
		1224	00	02	80
2	महालचांदनि – 84	32	00	23	80
		33	00	00	20
		31	00	01	20
		29	00	10	30
		30 / 259	00	05	70
		34 / 261	00	02	50
		30 / 260	00	03	00
		34 / 262	00	00	40

[फा. सं. आर-25011/21/2012-ओ.आर.-I]

पवन कुमार, अवर सचिव

289 GI/13 – 9

New Delhi, the 31st January, 2013

S.O. 234.— Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.)Retd.Competent Authority Paradip – Haldia –Durgapur LPG Pipeline & Augmentation of Paradip – Haldia –Barauni Pipeline Project, P.O,Duillya, Andul - Mouri, Mourigram,Howrah, 711-302 (West Bengal)

SCHEDULE-

P S:KANKSA	DISTRICT : BURDWAN		STATE : WEST BENGAL		
Sl. No.	Name of the Mouza	Khasra No. (L.R)	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
1	KANKSA - 86	374	00	01	60
		375	00	00	20
		373	00	01	30
		376	00	03	00
		371	00	00	40
		377	00	04	90
		380	00	03	60
		379	00	02	40
		382	00	02	80
		381	00	00	20
		383	00	02	80
		384	00	00	90
		385	00	00	80
		386	00	01	20
		387	00	00	80
		388	00	01	20
		389	00	01	70
		390	00	00	70
		393	00	01	10
		392	00	00	80
		396	00	01	60
		397	00	00	50
		1088	00	09	30
		407	00	01	40
		957	00	03	00
		1679/4815	00	00	60
		950	00	00	20
		951	00	03	90
		956	00	00	20
		952	00	02	00

1	2	3	4	5	6
	KANKSA - 86	953	00	04	40
	Contd...	948	00	00	20
		944	00	10	70
		943	00	05	40
		942	00	00	80
		941	00	01	10
		549	00	00	30
		548	00	02	80
		546	00	00	20
		547	00	02	50
		545	00	02	20
		551	00	05	30
		552	00	11	50
		554	00	01	70
		539/4357	00	03	00
		557	00	00	30
		558	00	03	00
		559	00	02	40
		562	00	02	20
		564	00	03	10
		567	00	14	10
		566	00	09	80
		565	00	00	20
		1558	00	02	80
		1557	00	06	30
		1560	00	01	00
		4776	00	02	10
		1566	00	03	10
		1567	00	04	10
		1576	00	02	30
		1568	00	05	00
		1569	00	03	70
		1570	00	01	60
		1507	00	00	40

1	2	3	4	5	6
	KANKSA - 86	1513	00	00	20
	Contd...	1510	00	00	20
		1504	00	05	10
		1511	00	00	40
		1495	00	00	20
		1496	00	02	10
		1497	00	02	10
		1492	00	01	80
		1494	00	00	20
		1493	00	00	20
		1491	00	02	10
		1490	00	00	20
		1457	00	02	50
		1458	00	00	20
		1456	00	01	20
		1459	00	04	00
		1460	00	03	20
		1222	00	07	90
		1223	00	00	90
		1224	00	02	80
2	MAHALCHANDNI - 84	32	00	23	80
		33	00	00	20
		31	00	01	20
		29	00	10	30
		30/259	00	05	70
		34/261	00	02	50
		30/260	00	03	00
		34/262	00	00	40

[F. No. R-25011/21/2012-O.R.-I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का.आ. 235.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप(उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि मे जो इस से उपाबद्व अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाऐ जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः **अब, केन्द्रीय** सरकार, पेट्रोलियम **और खनिज** पाइपलाइन्स (भूमि **में उपयोग** के धिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त क्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय ो घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको स अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, क्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के र्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू. बी. सी. एस. (प्रशासनिक) सेवानिवृत्त सक्षम धिकारी, पारादीप – हल्दिया – दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप – हल्दिया – बरौनी इपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्या, आन्दुल–मौरी, मौरीग्राम हावड़ा–711 302 (पश्चिम **गाल)** को लिखित रुप में आक्षेप भेज सकेगा।

अनुसूची

पुलिस स्टेशन : कॉकसा		जिला : वर्द्धमान	राज्य : पश्चिम बंगाल		
क्रम सं.	मौजा का नाम	खसरा सं. (आर.एस.)	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मी.
1	2	3	4	5	6
1	पानागड़ – 85	649	00	02	50
		648	00	00	50
		650	00	02	60
		593	00	01	70
		629	00	02	30
		630	00	00	60
		628	00	02	30
		631	00	00	20
		627	00	01	60
		632	00	01	50
		626	00	00	20
		633	00	00	70
		634	00	08	10
		620	00	00	30
		617	00	04	50
		618	00	00	60
		614	00	02	40
		603	00	00	20
		613	00	04	60
		610	00	02	00
		611	00	03	60
		608	00	00	30
		39	00	02	00

1	2	3	4	5	6
	पानागड़ – 85	44	00	03	30
	जारी.....	40	00	00	40
		43	00	02	70
		45	00	00	30
		110	00	01	10
		111	00	00	20
		109	00	02	30
		108	00	03	60
		46	00	00	20
		105	00	02	60
		107	00	01	30
		105/4506	00	05	60
		104	00	00	20
		104/4648	00	01	20
		103	00	01	60
		82	00	04	20
		81	00	01	50
		133	00	12	70
		227	00	01	20
		214	00	01	10
		213	00	03	90
		1/4598	00	06	70
		204	00	10	30
		205	00	09	20
		202	00	01	10
		198	00	02	90
		192	00	03	90
		197	00	02	10
		196	00	01	10
		193	00	09	10
		191	00	01	00
		190	00	06	70
		178	00	03	10
		179	00	01	20
		182	00	01	30
		181	00	04	70
		180	00	03	10
		170	00	03	20
		167	00	06	50

1	2	3	4	5	6
	पानागड़ – 85	151	00	01	60
	जारी.....	153	00	02	60
		152	00	00	40
		165	00	06	50
		164	00	03	10
		157	00	00	20
		158	00	00	20
		159	00	00	40
		160	00	00	40
		163	00	02	10
		161	00	01	90
		162	00	01	30
		2922	00	02	10
		2920	00	00	80
		2919	00	02	40
		2875 / 4470	00	00	20
		2875 / 4468	00	01	60
2	बिरूडिहा – 76	2675 / 3249	00	28	10
		2643 / 3242	00	00	20
		2647	00	00	30
		2648 / 3244	00	01	00
		2649	00	01	60
		2657	00	00	80
		2658	00	01	90
		2673	00	06	30
		2373 / 3142	00	00	80
		2676 / 3192	00	06	60
		2676	00	13	80
		3190	00	00	20
		3187	00	04	20
		3186	00	00	40
		3084	00	08	10
		497	00	04	20
		496	00	00	20
		493	00	02	40
		491	00	02	40

1	2	3	4	5	6
	बिरूडिहा – 76	492	00	00	20
	जारी.....	500	00	00	20
		503	00	01	00
		489	00	01	50
		487	00	00	40
		486	00	05	90
		485	00	05	10
		505	00	00	20
		484	00	00	90
		480	00	06	50
		481	00	00	20
		478 / 3106	00	10	70
		470	00	05	10
		471	00	04	70
		480 / 3105	00	00	20
		196	00	00	80
		198	00	02	30
		197	00	00	20
		200	00	03	10
		201	00	04	10
		203	00	04	90
		204	00	01	20
		204 / 3038	00	01	50
		211	00	00	20
		212	00	03	40
		214	00	03	60
		216	00	00	20
		213	00	05	50
		221	00	01	10
		222	00	00	50
		50	00	09	60
		57	00	00	20
		58	00	04	90
		59	00	01	50

1	2	3	4	5	6
	बिरूडिहा – 76	27 / 3198	00	01	20
	जारी.....	60	00	02	50
		27	00	02	60
		29	00	03	70
		30	00	05	80
		37	00	00	60
		31	00	03	40
		21	00	02	10
		20	00	00	40
		19	00	03	30
		2 / 3223	00	09	60
3	माणिकाड़ा – 77	563	00	01	50
		562	00	01	10
		560	00	04	00
		557	00	00	50
		559	00	04	30
		575	00	03	40
		574	00	02	30
		576	00	02	40
		585	00	05	70
		584	00	00	20
		586	00	03	30
		583	00	01	10
		543	00	00	40
		593	00	03	90
		592	00	03	50
		594	00	00	20
		617	00	00	80
		612	00	06	50
		616	00	00	40
		615	00	00	20
		613	00	01	20
		628 / 2297	00	02	00
		628 / 2296	00	02	30

1	2	3	4	5	6
	माणिकाड़ा – 77	628	00	01	30
	जारी.....	627	00	04	40
		628/2213	00	03	00
		633	00	02	70
		639	00	02	30
		435	00	00	20
		426	00	06	80
		424	00	06	00
		414	00	00	80
		416	00	02	10
		415	00	02	70
		417	00	08	60
		468/2385	00	00	80
		417/2250	00	02	10
		397	00	14	30
		395	00	01	40
		394	00	01	80
		393	00	03	60
		186	00	01	80
		229/2226	00	04	20
		229/2225	00	03	60
		229/2227	00	03	70

[फा. सं. आर-25011/21/2012-ओ.आर-I]

पवन कुमार, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 235.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.)Retd.Competent Authority Paradip – Haldia –Durgapur LPG Pipeline & Augmentation of Paradip – Haldia –Barauni Pipeline Project, P.O,Duillya, Andul - Mouri, Mourigram,Howrah, 711-302 (West Bengal)

SCHEDULE

P S:KANKSA	DISTRICT : BURDWAN		STATE : WEST BENGAL		
Sl. No.	Name of the Mouza	Khasra No. (R.S)	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
1	PANAGAR - 85	649	00	02	50
		648	00	00	50
		650	00	02	60
		593	00	01	70
		629	00	02	30
		630	00	00	60
		628	00	02	30
		631	00	00	20
		627	00	01	60
		632	00	01	50
		626	00	00	20
		633	00	00	70
		634	00	08	10
		620	00	00	30
		617	00	04	50
		618	00	00	60
		614	00	02	40
		603	00	00	20
		613	00	04	60
		610	00	02	00
		611	00	03	60
		608	00	00	30
		39	00	02	00
		44	00	03	30
		40	00	00	40
		43	00	02	70
		45	00	00	30

1	2	3	4	5	6
	PANAGAR - 85	110	00	01	10
	Contd...	111	00	00	20
		109	00	02	30
		108	00	03	60
		46	00	00	20
		105	00	02	60
		107	00	01	30
		105/4506	00	05	60
		104	00	00	20
		104/4648	00	01	20
		103	00	01	60
		82	00	04	20
		81	00	01	50
		133	00	12	70
		227	00	01	20
		214	00	01	10
		213	00	03	90
		1/4598	00	06	70
		204	00	10	30
		205	00	09	20
		202	00	01	10
		198	00	02	90
		192	00	03	90
		197	00	02	10
		196	00	01	10
		193	00	09	10
		191	00	01	00
		190	00	06	70
		178	00	03	10
		179	00	01	20
		182	00	01	30
		181	00	04	70
		180	00	03	10
		170	00	03	20
		167	00	06	50
		151	00	01	60
		153	00	02	60

1	2	3	4	5	6
	PANAGAR - 85	152	00	00	40
	Contd...	165	00	06	50
		164	00	03	10
		157	00	00	20
		158	00	00	20
		159	00	00	40
		160	00	00	40
		163	00	02	10
		161	00	01	90
		162	00	01	30
		2922	00	02	10
		2920	00	00	80
		2919	00	02	40
		2875/4470	00	00	20
		2875/4468	00	01	60
2	BIRUDIHA - 76	2675/3249	00	28	10
		2643/3242	00	00	20
		2647	00	00	30
		2648/3244	00	01	00
		2649	00	01	60
		2657	00	00	80
		2658	00	01	90
		2673	00	06	30
		2373/3142	00	00	80
		2676/3192	00	06	60
		2676	00	13	80
		3190	00	00	20
		3187	00	04	20
		3186	00	00	40
		3084	00	08	10
		497	00	04	20
		496	00	00	20
		493	00	02	40
		491	00	02	40

1	2	3	4	5	6
	BIRUDIHA - 76	492	00	00	20
	Contd...	500	00	00	20
		503	00	01	00
		489	00	01	50
		487	00	00	40
		486	00	05	90
		485	00	05	10
		505	00	00	20
		484	00	00	90
		480	00	06	50
		481	00	00	20
		478/3106	00	10	70
		470	00	05	10
		471	00	04	70
		480/3105	00	00	20
		196	00	00	80
		198	00	02	30
		197	00	00	20
		200	00	03	10
		201	00	04	10
		203	00	04	90
		204	00	01	20
		204/3038	00	01	50
		211	00	00	20
		212	00	03	40
		214	00	03	60
		216	00	00	20
		213	00	05	50
		221	00	01	10
		222	00	00	50
		50	00	09	60
		57	00	00	20
		58	00	04	90
		59	00	01	50

1	2	3	4	5	6
	BIRUDIHA - 76	27/3198	00	01	20
	Contd...	60	00	02	50
		27	00	02	60
		29	00	03	70
		30	00	05	80
		37	00	00	60
		31	00	03	40
		21	00	02	10
		20	00	00	40
		19	00	03	30
		2/3223	00	09	60
3	MANIKARA - 77	563	00	01	50
		562	00	01	10
		560	00	04	00
		557	00	00	50
		559	00	04	30
		575	00	03	40
		574	00	02	30
		576	00	02	40
		585	00	05	70
		584	00	00	20
		586	00	03	30
		583	00	01	10
		543	00	00	40
		593	00	03	90
		592	00	03	50
		594	00	00	20
		617	00	00	80
		612	00	06	50
		616	00	00	40
		615	00	00	20
		613	00	01	20
		628/2297	00	02	00
		628/2296	00	02	30

1	2	3	4	5	6
	MANIKARA - 77	628	00	01	30
	Contd...	627	00	04	40
		628/2213	00	03	00
		633	00	02	70
		639	00	02	30
		435	00	00	20
		426	00	06	80
		424	00	06	00
		414	00	00	80
		416	00	02	10
		415	00	02	70
		417	00	08	60
		468/2385	00	00	80
		417/2250	00	02	10
		397	00	14	30
		395	00	01	40
		394	00	01	80
		393	00	03	60
		186	00	01	80
		229/2226	00	04	20
		229/2225	00	03	60
		229/2227	00	03	70

[F. No. R-25011/21/2012-O.R.-I]

PAWAN KUMAR, Under Secy.

नई दिल्ली, 31 जनवरी, 2013

का.आ. 236.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप(उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए :

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि मे जो इस से उपाबद्ध अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाऐ जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है :

289 GI/13—1

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको स अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, क्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के र्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू. बी. सी. एस. (प्रशासनिक) सेवानिवृत्त सक्षम धिकारी, पारादीप – हल्दिया – दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप – हल्दिया – बरौनी इपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्या, आन्दुल–मौरी, मौरीग्राम हावड़ा–711 302 (पश्चिम गाल) को लिखित रुप में आक्षेप भेज सकेगा।

अनुसूची

पुलिस स्टेशन : वज् वज् –। जिला : दक्षिण 24 परगणा राज्य : पश्चिम बंगाल					
क्रम सं.	मौजा का नाम	खसरा सं. (एल.आर.)	क्षेत्रफल		
			हेक्टेयर	एयर	वर्ग मी.
1	2	3	4	5	6
1	जगतवल्लभपुर – 45	350	00	11	10
		354 / 862	00	00	50
		353	00	01	90
		352	00	05	80
		356	00	05	90
		357	00	04	70
		340	00	01	70
		339	00	03	20
		291	00	01	00
		284	00	00	20
		292	00	16	30
		298	00	00	20
		297	00	00	20
		296	00	00	20
		294	00	00	20
		293 / 940	00	05	80
		293	00	11	10
		283	00	05	60
		282	00	04	60
		281 / 937	00	02	30
		281 / 936	00	00	20
		281	00	02	10
		261	00	03	70
		265	00	02	20
		263	00	01	90
		262	00	01	40

1	2	3	4	5	6
	जगतवल्लभपुर -- 45	162 / 1030	00	00	20
	जारी....	110	00	01	80
		109	00	01	80
		108	00	02	60
		107	00	09	20
		106	00	05	20
		123	00	00	90
		111	00	00	30
		124 / 910	00	10	50
		105	00	01	10
		102	00	00	20
		125	00	00	40
		124	00	01	90
		124 / 909	00	05	00
		126	00	05	70
		129	00	15	30
		128	00	00	20
		130	00	08	00
		92	00	00	20
		132	00	00	60
		137	00	00	20
		131	00	11	10
		88	00	00	20
		87	00	02	60
		87 / 856	00	04	50
		86	00	06	00
		85 / 901	00	00	30
		85	00	01	80
2	दुर्गापुर -- 38	417	00	00	50
		416	00	02	40
		409	00	13	50
		314	00	00	90
		393	00	00	50
		392	00	10	10
		395	00	00	90
		391	00	01	60
		388	00	09	80
		387	00	01	80

1	2	3	4	5	6
	दुर्गापुर – 38 जारी...	331	00	00	20
		322	00	21	90
		321	00	00	20
		321 / 1099	00	03	20
		321 / 1100	00	00	20
		321 / 1101	00	02	00
		289	00	01	30
		293	00	00	30
		291	00	01	90
		290	00	04	40
		292	00	00	20
		220	00	01	90
		225	00	00	20
		225 / 1091	00	01	40
		219 / 1089	00	00	20
		664 / 1043	00	01	60
		664 / 1156	00	01	50
		664 / 1042	00	03	40
		664	00	05	40
		674	00	02	10
		671	00	01	10
		673	00	04	20
		672	00	01	30

[फा. सं. आर-25011/15/2012-ओ.आर.-I]

पवन कुमार, अवर सचिव

New Delhi, the 31st January, 2013

S.O. 236.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.)Retd.Competent Authority Paradip – Haldia –Durgapur LPG Pipeline & Augmentation of Paradip – Haldia –Barauni Pipeline Project, P.O.Duillya, Andul - Mouri, Mourigram,Howrah, 711-302 (West Bengal)

SCHEDULE

P.S : BUDGE BUDGE - I DISTRICT : SOUTH 24 PARGANAS STATE : WEST BENGAL					
Sl. No.	Name of the Mouza	Khasra No. (L.R.)	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
1	JAGATBALLABPUR - 45	350	00	11	10
		354/862	00	00	50
		353	00	01	90
		352	00	05	80
		356	00	05	90
		357	00	04	70
		340	00	01	70
		339	00	03	20
		291	00	01	00
		284	00	00	20
		292	00	16	30
		298	00	00	20
		297	00	00	20
		296	00	00	20
		294	00	00	20
		293/940	00	05	80
		293	00	11	10
		283	00	05	60
		282	00	04	60

1	2	3	4	5	6
	JAGATBALLABPUR - 45	281/937	00	02	30
	Contd . . .	281/936	00	00	20
		281	00	02	10
		261	00	03	70
		265	00	02	20
		263	00	01	90
		262	00	01	40
		162/1030	00	00	20
		110	00	01	80
		109	00	01	80
		108	00	02	60
		107	00	09	20
		106	00	05	20
		123	00	00	90
		111	00	00	30
		124/910	00	10	50
		105	00	01	10
		102	00	00	20
		125	00	00	40
		124	00	01	90
		124/909	00	05	00
		126	00	05	70
		129	00	15	30
		128	00	00	20
		130	00	08	00
		92	00	00	20
		132	00	00	60
		137	00	00	20
		131	00	11	10
		88	00	00	20
		87	00	02	60
		87/856	00	04	50
		86	00	08	00
		85/901	00	00	30
		85	00	01	80

1	2	3	4	5	6
2	DURGAPUR - 38	417	00	00	50
		416	00	02	40
		409	00	13	50
		314	00	00	90
		393	00	00	50
		392	00	10	10
		395	00	00	90
		391	00	01	60
		388	00	09	80
		387	00	01	80
		331	00	00	20
		322	00	21	90
		321	00	00	20
		321/1099	00	03	20
		321/1100	00	00	20
		321/1101	00	02	00
		289	00	01	30
		293	00	00	30
		291	00	01	90
		290	00	04	40
		292	00	00	20
		220	00	01	90
		225	00	00	20
		225/1091	00	01	40
		219/1089	00	00	20
		664/1043	00	01	60
		664/1156	00	01	50
		664/1042	00	03	40
		664	00	05	40
		674	00	02	10
		671	00	01	10
		673	00	04	20
		672	00	01	30

[F. No. R-25011/15/2012-O.R.-I]

PAWAN KUMAR, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 3 जनवरी, 2013

का.आ. 237.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (आईडी संख्या 22/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/400/2002-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 3rd January, 2013

S.O. 237.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Kalidaspur Project, M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 03-01-2013.

[No. L-22012/400/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : Shri Jayanta Kumar Sen, Presiding Officer

Reference No. 22 of 2003

Parties : The Management of Kalidaspur Project, M/s. ECL, Bankura

Vs.

The Org. Secy., CMC (HMS), Asansol (WB).

Representatives :

For the management : Sri P. K. Goswami, Ld. Advocate

For the union (Workman) : Sri S. K. Pandey, Ld. Representative

Industry : Coal : State : West Bengal

Dated 05-12-12

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/400/2002-I.R. (CM-II) dated 11-7-2003 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Kalidaspur Project of M/s. ECL in dismissing Sh. Sarban Dusad, Reef Bolt Driller w.e.f. 03-07-1999 is legal and justified ? If not, to what relief he is entitled ?"

Having received the Order of Letter No. L-22012/400/2002-I.R. (CM-II) dated 11-07-2003 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 22 of 2003 was registered on 21-07-2003 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri S. K. Pandey, Ld. Representative of the Union, submits that the case may be closed as the workman has already been reinstated by the management. Since the workman has already joined in service, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 3 जनवरी, 2013

का.आ. 238. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असनसोल के पंचाट (आईडी संख्या 15/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/338/1999-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd January, 2013

S.O. 238.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2000) of the Cent. Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial

Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 03-01-2013.

[No. L-22012/338/1999-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : Shri Jayanta Kumar Sen, Presiding Officer

Reference No. 15 of 2000

Parties : The Management of Shyamsunderpur Colly., M/s. ECL, Burdwan

Vs.

The Secy., CMSI (CITU), Ukhra (WB).

Representatives :

For the management : Sri P. K. Das, Ld. Advocate

For the union (Workman) : None

Industry : Coal : State : West Bengal

Dated 05-12-12

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/338/99-I.R. (CM-II) dated 27-01-2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Shyamsunderpur Colliery of M/s. ECL in not including the training period as Mining Trainee in case of Sh. Barun Kr. Roy Choudhury and Sh. Pranab Kumar Mukherjee in the service record is legal and justified? If not, to what relieves the workmen are entitled ?"

Having received the Order of Letter No. L-22012/338/99-I.R. (CM-II) dated 27-01-2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 15 of 2000 was registered on 07-02-2000 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it is found that the workman is neither appearing nor taking any step since the year 2010. It seems that the workman does not want to proceed with the case any further. As such the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 3 जनवरी, 2013

का.आ. 239.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आल इंडिया रेडियो के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 269/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2013 को प्राप्त हुआ था ।

[सं. एल-42012/20/2004-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd January, 2013

S.O. 239.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 269/2011) of the Central Government Industrial Tribunal-cum-Labour Court, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of All India Radio and their workmen, received by the Central Government on 03-01-2013.

[No. L-42012/20/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 269/2011

Sh. Ram Avtar,
R/o Bamnoli, PO Dhulasiras,
New Delhi-110045. ...Workman

Versus

The Director General,
All India Radio,
Through Chief Engineer (North Zone),
New Delhi ...Management

289 GI/13-12

AWARD

A contract labour was engaged by M/s. G. T. Roadways, a contractor, in January 1999 to carry out work awarded by All India Radio and Doordarshan (in short the management). he served the contractor upto 7th February 2001. His services were disengaged by the contractor. Belabouring under a belief that he was an employee of the management, he raised a demand for reinstatement in service. When his demand was not conceded to, he preferred a petition before the Central Administrative Tribunal (in short the CAT) . His petition was disposed of by the CAT on 31st July 2002. Thereafter he filed a claim petition before the Conciliation Officer. Since his claim was contested by the management, conciliation proceedings come to an end. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to the Central Government Industrial Tribunal No. 2, New Delhi, vide order No. L-42012/20/2004-IR (CM-II), New Delhi dated 27-01-2005, for adjudication with following terms :

> "Whether the demand of the workman Sh. Ram Avtar, Labourer for reinstatement in the establishment of Chief Engineer (North Zone), Akashwani and Doordarshan w.e.f. 8-2-2001 is just, fair and legal? If yes, to what relief the workman is entitled and from which date?"

2. Claim statement was filed by the contract labour, namely, Shri Ramavtar pleading that he was recruited by the contractor in January 1999 to work at the office of Chief Engineer (North Zone) of the management. Initially he was paid rupees eighty five per day, which amount was later on increased to rupees ninety five per day. Though he was recruited by the contractor, yet his work was not supervised by him. In fact officials of the management were supervising his work. He worked upto 7th February 2001, without any break. He rendered more than 240 days service in every calender year. His services were dispensed with by the management, in collusion with the contractor, on 7th February 2001. No notice or pay in lieu thereof was given to him. Retrenchment compensation was also not paid and provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act) were related. After termination of his services other persons were engaged. He claims that an award may be passed in his favour, reinstating him in services of the management with continuity and full back wages.

3. Claim was demurred by the management, pleading that there was no relationship of employer and employee between the parties. It was M/s. G.T. Roadways, the contractor, who engaged the claimant to carry out work awarded to it. The contractor made payments of wages to the claimant. Contractor used to superwise work of claimant. Services of the claimant were dispensed with by the contractor. There is no case of reinstatement in service, in favour of the claimant. His claim deserves dismissal, being devoid of merits, pleads the management.

4. Vide order No. Z-20019/6/2007-IR (C-II), New Delhi, dated 30-03-2011, the appropriate Government transferred the case to this Tribunal for adjudication.

5. Claimant has examined himself in support of his claim. Shri R.V. Sharma was examined by the management in its defence. No other witness was examined by either of the parties.

6. Argument were heard at the bar. Shri Jatin Rajput, authorized representative, advanced arguments on behalf of the claimant. Shri S. M. Arif, authorized representative, presented facts on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows.

7. In his affidavit Ex. WW1/A, tendered as evidence, claimant swears that initially he was recruited by M/s. G.T. Roadways in June 1982 to work as carpenter at the site of the management. His services received a break in 1985. He was recruited again in January 1999 at the same site, where he worked till 07-02-2001. His wages were paid at the site by the contractor. He placed reliance on documents Ex. WW1/1 to Ex. WW1/31, to establish that he was an employee of the management.

8. Sh. R.V. Sharma project in his affidavit Ex. MW1/A that there was no relationship of employer and employee between the parties. Claimant was employed by the contractor. His deployment was at the discreation of the contractor. The management used to make payment to the contractor on the basis of measurements of work done on behalf of the contractor. Supervision of work of the claimant was done by the contractor. During the course of cross examination he unfolds that no supervisor was employed by the management to inspect work of contract labours. Management never checked work done by the carpenters. When work used to come to an end, at that juncture work was inspected. In case it was found not according to specifications, the management used to reject the work.

9. Out of facts unfolled by the claimant and Sh. R.V. Sharma, it came to light that the claimant was recruited by the contractor. The claimant was employed at the site of the management by the contractor, to carry out work awarded to him. The contractor used to make payment of wages to the claimant. No supervisor was appointed by the management to superwise work of the contract labours. It was the contractor who used to superwise work of his employees.

10. Whether relationship of employer and employee existed between the parties? For an answer to this proposition, it is to be appreciated as to how a contract of service is entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is

one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended althouh never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties recognized one another as master or servant.

11. As conceded by the claimant he was employed by the contractor. No evidence was adduced by the claimant to the effect that the contractor was an agent of the management. Documents, which are Ex. WW1/1 to Ex. WW1/31, nowhere bring it over the record that the claimant was ever engaged by the management. On the other hand, above documents project that the claimant was an employee of the contractor. Consequently it is clear that the claimant was employed by the contractor, to carry out work awarded to him by the management. The claimant made an admission in his affidavit to the effect that his wages were paid by the contractor. These facts are sufficient to conclude that it was the contractor who engaged the claimant on job, to carry out work awarded to him by the management. The contractor was the pay master of the claimant. Relationship of employer and employee never existed between the claimant the management.

12. Whether the claimant, who was an employee of the Contractor, can maintain a dispute against the management? For an answer to this proposition, the Tribunal has to take note of the law contained in Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of Section 10 of the Contract Labour Act are reproduced thus :

"10. Prohibition of employment of contract labour :-

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation—If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate "Government thereon shall be final."

13. As emerge out of the provisions of sub-section (1) of Section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited; by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. (supra). The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub-section (1) of Section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus :

". . . .they fall in three classes : (1) where contract labour is engaged in or in connnection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of

of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer."

14. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S. C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

15. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ 233], which was referred with approval in Steel Authority of India.

16. In Shivnandan Sharma [1955 (1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was : was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down :

> "If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

17. In Hussainbhai (supra) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though drapped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words :

> "Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different

perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

18. In Steel Authority of India (supra) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired : (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (supra) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the management since he agitates that the contract agreement between the management and the contractor is sham and nominal.

19. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contactor labour in the establishment, when either it is not registered or its registratrion has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made thereunder penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

20. In the Steel Authority of India (supra) the Apex Court laid emphasis ". . . .the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in sections 23 and 25 a different sequel, be if absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

21. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the management ? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962 (I) LLJ 131], Shibu Metal Works [1966 (I) LLJ 717], National Iron & Steel Co. [1967 (II) LLJ 23] and Ghatge and Patil

(Transport) P. Ltd. [1968 (I) LLJ 566] The National Commission on Labour (1966) in para 2 its report, enumerated those factors, on which abolition of contract labour was ordered, thus :

> "29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day: (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

22. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971 (2) S.C.C. 724] and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus :

> "The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contract labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide maters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10,1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate, Government in accordance with the provisions of the Central Act".

23. In Gujarat Electricity Board [1995 (5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests to the appropriate Government and not in any court including the industrial adjudicator. it would be apposite to reproduce the observation of the court thus :

"53. Our conclusions and answers to the questions raised are, therefore, as follows :

(i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.

(ii) If the contract is sham or not genuine, the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However

the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

24. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujarat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under Section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

25. Now I would turn to the facts of the present controversy. It is not a case where an employee of a contractor, employed in a statutory canteen, has invoked the jurisdiction of this Tribunal. This matter, as projected by the claimant is left to be approached on the proposition as to whether contract agreement entered into between the management and the contractor was sham and nominal. Unfortunately, either of the parties had not produced the contract agreement before this Tribunal. Under these circumstances, the Tribunal cannot examine the written instrument entered into between the management and the contractor. However, it would be ascertained as to whether the claimants could produce evidence to the effect that financial, supervisory, administrative and disciplinary control were exercised over him by the management.

26. As testified by Shri R.V. Sharma, no supervisor was deployed by the management to supervise the work of the carpenters. Work done by contract labours was measured and than payment was made to the contractor. Deployment of the claimant was at the discretion of the contractor. It is not a matter of dispute that services of the claimant were dispensed with by the contractor. It is admitted fact that the contractor used to pay wages to the claimant. No evidence has been brought over the record by the claimant to show that the management could exercise disciplinary control over him. Out of facts detailed above it stood established that the claimant has not been able to pinpoint that the contract entered into between the management and the contractor was sham and bogus. No evidence was brought over the record to show that the said contract was a perfect paper arrangement. There is a complete vaccum evidence to show that the contract was entered into with a view to evade labour legirlations. No eyebrow could be raised about legality and genuineness of the contract entered into between the management and the contractor. Hence it can not be concluded that the contract was ruse. No circumstances are there to announce that the claimant would be deemed to be an employee of the management. Services of the claimant were done away by the contractor, under these circumstances the management was not under an obligation to comply with the provisions of Sections 25-F, 25-G and 25-H of the Act. There is no case in favour of the claimant to seek reinstatement in the services of the management. His claim is liable to be dismissed. Accordingly his claim is discarded. An award is passed in favour of the management and against the claimant. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 03-12-2012

नई दिल्ली, 3 जनवरी, 2013

का.आ. 240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (आई.डी. संख्या 04/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/241/2004-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd January, 2013

S.O. 240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2006) of the Central Govt. Industrial Tribunal-cum-Labour Court, ASANSOL as shown in the Annexure, in the Industrial Dispute between the management of Jhanjra Area of M/s. ECL, and their workmen, received by the Central Government on 03-01-2013.

[No. L-22012/241/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT: Shri Jayanta Kumar Sen, Presiding Officer

Reference No. 04 of 2006

PARTIES: The Management of 3 & 4 Incline Mine, Jhanjra Area of M/s. ECL, Burdwan.

Vs.

The General Secy., KMC, Asansol Burdwan.

Representatives :

For the management : Sri P. K. Goswami, Ld.Advocate

For the union (Workman) : Sri S. K. Pandey, Ld. Representative

Industry : Coal : State : West Bengal

Dated 04-12-12

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/241/2004-IR(CM-II) dated 24-02-2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of 3 & 4 Incline of Jhanjra Area of M/s. Eastern Coalfields Limited in dismissing Sri Harilal Koiri, U.G. Loader, U. M. No. 694043 from service w.e.f. 09-03-1999 is legal and justified ? If not, to what relief the workman is entitled ?"

(2) Having received the Order of Letter.- No. L-22012/241/2004-IR(CM-II) dated 24-02-2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 04 of 2006 was registered on 16-03-2006 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

(3) Workman Harilal Koiri, U.G Loader in 3 & 4 Incline of Jhanjra Area of M/s. ECL. He has found absent from 26-08-1998 to 08-09-1998, only 14 days, without any information and after enquiry he was found guilty and dismissed from the service of the Company w.e.f. 09-03-1999.

The plea taken on behalf of the workman is that due to sickness he could not attend his duty for 14 days and only for this short period he is dismissed by the Management by holding an exparte enquiry. The learned representative of the workman has further submitted and from Para 1 of the written statement filed on behalf of the Management dated 25-07-2007, it is apparently clear that the attendance of the workman in the year 1996 is 132 days, in 1997 is 150 days and in the year 33 days.

Thus, I find that the Management has taken very harsh step against the workman by dismissing him from duty only for absent 14(fourteen) days, and due to this harsh step the workman along with his whole family members have been thrown on the street for the purpose of begging which is very-very cruel action as well as against the "Natural Justice". The Management could have given a warning to the workman, Harilal Koiri instead of awarding a capital punishment.

(4) Considering the whole facts and circumstances of the nature of the case, I find and come into conclusion that the action of Management of 3 & 4 Incline of Jhanjra Area of M/s. Eastern Coalfields Limited, in dismissing Harilal Koiri, U.G. Loader U.M. No. 694043 from the service w.e.f. 09-03-1999 is totally illegal and unjustified. The workman, Harilal Koiri, is entitled for re-instatement in service from 26-08-1998 along with full pay and wages within two months from the date of publication of this award in the Gazette of India.

ORDER

Let an "Award" be and the same is passed as per above. Send the copies of the "Award" to the Government of India, Ministry Labour & Employment, New Delhi for information and needful.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 3 जनवरी, 2013

का.आ. 241.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (आईडी संख्या 140/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/72/2005-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd January, 2013

S.O. 241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 140/2005) of the Central Govt. Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Jhanjra Area of

M/s. ECL, and their workmen, received by the Central Government on 03-01-2013.

[No. L-22012/72/2005-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE No. 140 of 2005

Parties: The management of 1 & 2 Incline, Jhanjra Area of M/s. ECL, Burdwan.

Vs.

The Gen. Secy., KMC, Asansol, Burdwan

REPRESENTATIVES:

For the management	:	Sri P.K. Goswami, Ld. Advocate
For the union (Workman)	:	Sri S.K. Pandey, Ld. Representative
Industry : Coal	:	State : West Bengal

Dated - 03-12-12

AWARD

In exercise of powers conferred by clause (d) of sub-section(1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/72/2005-I.R.(CM-II) dated 08-12-2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of ECL, 1 and 2 Incline, Jhanjra Area in dismissing Sh. Hamid Mian, Tyndal from services w.e.f. 02-06-2004 is legal and justified? If not, to what relief is the workman entitled?"

(2) Having received the Order of Letter No. L-22012/72/2005-I.R. (CM-II) dated 08-12-2005 of the above said reference from the Govt. of India, Ministry of labour, New Delhi for adjudication of the dispute, a reference case No. 140 of 2005 was registered on 23-12-2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

(3) On perusal of the record I find that the Management did not file any written statement in this case. lastly on 30-03-12 the learned lawyer Shri Piyush Kanti Goswami, Advocate, has filed one written argument but no authorization has been filed on behalf of the Management though the Court has directed several times to file authorization order. No witness turned up for his evidence, and the learned lawyer of Management has shown his helplessness before the Court. No doubt the act of Management clearly shows serious lackness on its part.

(4) Case against the workman Hamid Mian is that he was working as Tyndal in 1 & 2 Incline, Jhanjra Area of M/s. ECL and he herein absent from his duties w.e.f. 27-08-2003 without giving any information, and thereafter an enquiry was set-up in which the workman did not turn up to show his genuine claim about his sickness which was cause of the absent, and subsequently the Management found him guilty for unauthorized absent since 27-08-2003 and accordingly dismissed from service w.e.f. 02-06-2004.

Now it has to be looked into that whether the action of the Management in dismissing the workman, Hamid Mian is legal and justified or not.

(5) On perusal of the record I find that the workman has filed his written statement on 10-10-2006 along with xerox copies of Charge-Sheet, Enquiry proceeding, Enquiry report and Dismissal Order. The workman has also filed his examination in chief through affidavit and he has been cross-examined on behalf of Management.

On perusal of the written statement as well as statement on oath by affidavit I find that the workman has admitted the fact that he remain absent from duty since 27-08-2003 and the plea of absent has been taken as "due to sickness", and I find that no Medical document has been filed by the workman to corroborate the plea of sickness, nor any document has been filed regarding his physical fitness issued by the treating doctor. On the other hand, I find from the copy of enquiry report and Charge Sheet the workman is a habitual absentee for which he was earlier punished four times as :—

(i) In 2000 - Stoppage of three increments.
(ii) In 2001- Stoppage of two increments.
(iii) In 2002- Stoppage of three annual increments.
(iv) In 2003- Stoppage of one increment with "Final Warning"

I find that these four warning have not been challenged by the workman in his written statement nor in his evidence.

Thus, from the above facts I find that the workman Hamid Mian is a "habitual absentee" and even after four time punishment he failed to reform himself and also failed to become punctual in service.

289 GI/13-13

(6) Considering the whole facts and - circumstances as well as the conduct of the workman, Hamid Mian, Tyndal, I find the action of the ECL, 1 & 2 Incline, Jhanjra Area taken against him by dismissing w.e.f. 02-06-2004 is correct, and this Tribunal does not find any ground to interfere in the same.

Accordingly the claim of the workman Hamid Mian stands dismissed.

ORDER

Let an "Award" be and the same is passed as per above. Send the copies of the "Award" to the Government of India, Ministry of Labour & Employment, New Delhi for information and needful

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 3 जनवरी, 2013

का.आ. 242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (आईडी संख्या 164/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/246/1999-आई आर (सीएम-II)
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 3rd January, 2013

S.O. 242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 164/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the employers in relation to the mnagement of ECL, and their workmen, which was received by the Central Government on 03-01-2013.

[No. L-22012/246/1999-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE No. 164 of 1999

PARTIES: The management of Siduly Colly., M/s. ECL, Burdwan.

Vs.

The Gen. Secy., UCMU (INTUC), Ukhra (WB).

REPRESENTATIVES:

For the management : Sri P.K. Das, Ld. Advocate

For the union workman : None

Industry : Coal : State : West Bengal

Dated - 05-12-12

AWARD

In exercise of powers conferred by clause (d) of sub-section(1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/246/99-I.R.(CM-II) dated 22-11-99 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Siduly Colliery under Kenda Area of ECL in stopping the work of Sh. Rupen Ram and 21 others is legal and justified? If not, to what reliefs are the workmen entitled?"

(2) Having received the Order of Letter No. L-22012/246/99-I.R.(CM-II) dated 22-11-99 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 164 of 1999 was registered on 06-12-1999 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

(3) On perusal of the case record, it is found that the workman is neither appearing nor taking any step since long. It seems that the workman does not want to proceed with the case any further. As such the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 196/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-01-2013 को प्राप्त हुआ था ।

[सं. एल-22012/32/2001-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 196/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 04-01-2013.

[No. L-22012/32/2001-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/196/2002 Date : 19-12-2012.

Party No. 1 : The Sub Area Manager, SECL, Rajgamar Colliery, Distt. Korba Chattisgarh-495683

Versus

Party No. 2 Shri S.K. Prasad, Dy. General Secretary, Koyala Shramik Sangh (UTUC-LS), Qtrs. No. B/60, Drilling Camp, Subash Block, Korba Colliery, Korba, Chattisgarh-495679

AWARD

(Dated : 19th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short) the Central Government had referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Ramakrishna and Shri Tika Ram, to Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur for adjudication, as per letter No. L-22012/32/2001-IR (CM-II) dated 11-12-2001, with the following schedule :—

"Whether the action of the management of SECL, Rajgamar Colliery, Dt. Korba (Chattisgarh State) in terminating the services of Shri Ramakrishna and Tika Ram, workmen w.e.f. 08-01-2000 is legal and justified? If not, to what relief the workmen are entitled to?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workmen, Shri Ramakrishna and Shri Tika Ram, ("the workmen" in short) through their union, Koyala Sharmik Sangh (UTUC-LS), ("the union" in short) filed the statement of claim and the management of SECL, Rajgamar Colliery ("party no. 1" in short) filed the written statement.

The case of the workmen as projected by the union in the statement of claim is that workman, Tikaram was working as general mazdoor and the workman, Ramkrishna was working as Timber helper in Rajgamar 6-7 Incline under Korba Area and on 29-07-1999, both the workmen were charge sheeted under clauses 26.1 and 26.34 of the Certified Standing Order, on the allegations that on 25-07-1999, while they were performing their duties near 41- Rise Haulage, for jamming pocket holes, they were found missing from their place of work from 10.30 PM to 11.30 PM and at about 2.00 AM, they came out through the opening no. 6 of the Haulage Road, even though, there was no propriety for them to come out through the said way and when they were going home, there was one bag each having some material in the same, on their cycles, so the watchmen, Madanlal/Tejram tried to stop both of them for security checking and when they wanted to verify the bags, the workmen told them about the bags of having capsules and the guards of having no authority to check the same, so guard, Madanlal asked Ramkrishna to deposit the material in the bag in the MTK office, but Ramkrishna, instead of depositing the material at MTK office, kept the bag in the drum, in which he used to keep his shoes and helmet and locked the drum and then both the workmen left the mine and on 26-07-1999 at about 08.00 AM, a report regarding theft of cable by cutting the same from Deep no. 35 of the mine was received and when the drum in which Ramkrishna had kept the bag was got open on 26-7-1999 at about 08.00 AM, 15 to 20 kilograms of cable wire was found inside the same and the said wire was the stolen wire from 35-Deep of the mine and both the workmen were put under suspension from 29-07-1999 and the workmen submitted their reply, denying the charges and also pointing out therein, of their being framed in a totally false case and an enquiry was initiated against them and as the enquiry officer did not act impartially, they submitted an application to change the enquiry officer and they also requested for permission to engage advocate for their defence and the top officers assured them that the enquiry to be a routine one and nothing serious would come out from the same and the enquiry was not held properly and the same was held in breach of the principles of the natural justice and the evidence adduced in the enquiry did not prove the charges leveled against the workmen. The further case as presented by the union is that a criminal case was also initiated against the workmen on the allegations that on 28-07-1999, while Shri Meshram, the security inspector was inspecting Mines no. 6 and 7, found both the workmen were returning after finishing their work in the colliery and they had something in a plastic bag, so the security inspector checked the same and found the bag of having lead of ormet cable, which was stolen from the mine and on the basis of a complaint lodged to the police, crime no. 167/99 (criminal case no. 429/2000) was registered against both the workmen and police seized the alleged stolen copper wire and the workmen were acquitted in the criminal case by the JMFC, Korba and as such, the entire departmental enquiry was required to be viewed in that back ground. It is also pleaded by the union that the enquiry officer submitted his report on 02-11-1999 and the said report is a biased report and at the time of preparation of the report, the enquiry officer did not consider the effect of the cross-examination of the witnesses by the workmen, the absence of relevant materials on record and the police

complaint and basing on such enquiry report, a show-cause notice was issued to the workmen, on 13-11-1999, calling upon them to show cause as to why they should not be punished for the misconduct and the workmen submitted their explanations raising valid grounds to show that the action sought to be taken against them to be unwarranted, but the party no. 1, without looking into the show cause, on 08-01-2000, issued the order of dismissal from services against both of them w.e.f. 10-01-2000 and the workmen were not given opportunity to show cause as to why the findings of the enquiry officer should not be accepted and as the date, time and place of the alleged theft of cable in the charge sheet issued against the workmen and the F.I.R. submitted by the security officer before the police were quite contradictory to each other, it is apparent that the workmen were framed in false incident and there was absolutely no evidence before the enquiry officer to hold the workmen guilty of the charges and the oral evidence adduced in the enquiry by the management was also contradictory, inconsistent and suspicious and the findings of the enquiry officer, basing on such evidence are perverse and necessary evidence was not produced in the enquiry to connect the workmen in commission on the alleged theft of cable and documents including copy of the preliminary enquiry report and proceedings were not supplied to the workmen and the workmen were vicitimized at the instance of the security guards and the enquiry was conducted in a slip sord manner, without giving opportunity to the workmen to defend their case and without producing relevant record and material in the enquiry and management should have allowed the workmen to engage lawyer or at least proper defence representative to defend them and the punishment is shockingly disproportionate and the order of dismissal dated 08-01-2000 is totally unwarranted, arbitrary and unsustainable and unfair labour practice and the workmen are entitled for reinstatement in service with continuity and full back wages.

3. The party no.1 in its written statement has pleaded inter-alia that the workman, Tikaram was working as a general mazdoor and workman, Ramkrishna was working as a Timber helper in Rajagamar 6-7 Incline under Korba Area and charge sheets were issued against both of them, for commission of serious misconduct in the mine premises and as the replies submitted by them were found not to be satisfactory, a detailed departmental enquiry was conducted against them and both the workmen participated in the enquiry and they were afforded full and reasonable opportunities to defend themselves in the departmental inquiry on the principles of natural justice and in the enquiry, the misconduct of the workmen was proved beyond reasonable doubt and considering the gravity of the misconduct, they were dismissed from services and in view of the grave misconduct and in the greater interest of the company, it is not desirable to re-instate the workmen in service. It is also pleaded by the party no. 1 that a fair and legal departmental enquiry was conducted and only on the basis of the facts proved before the enquiry officer, the workmen were terminated from services and the enquiry officer acted impartially, hence changing of the Enquiry Officer did not arise and in a departmental enquiry, normally assistance of advocate is not allowed, hence there was no question of providing assistance of advocate to the workmen and the allegations that the enquiry officer did not record all the questions and answers are quite false and such objection was never raised by the workmen at any time during the enquiry and they signed the enquiry report in token of its acceptance and such allegations are the outcome, of afterthought and the acquittal of the workmen in the criminal case no way affect the results of the departmental enquiry and in a criminal case, strict law of evidence is applicable, where as in the departmental enquiry, the preponderance of probability is the deciding factor and as such, it cannot be claimed that simply for being acquitted in a criminal case, the workmen should not have been terminated for the misconduct proved in a departmental enquiry and the workmen were allowed to engage co-worker of their choice, they were supplied with copies of documents relied by the management, were given opportunity to produce their own witnesses and opportunity to cross-examination of the management witnesses and as such, it cannot be termed that the workmen were not given opportunity to defend themselves and as the show cause was devoid of merit, the same was not considered, and the workmen were given the second show-cause notices and the reply to second show cause notice was perused by competent authority, before the workmen were terminated and the workmen are not entitled to any relief.

4. As this is a case of termination of the services of the two workmen from services, after holding a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 12-10-2011, the departmental enquiry conducted against the workmen was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workmen that both the workmen were having a clean and unblemished service record and charge sheet dated 29-07-1999 was submitted against them under clauses 26.1 and 26.34 of the certified standing order on the allegations of committing theft of the property of the employer and leaving the workplace without, permission or sufficient cause respectively and both the workmen were also put under suspension and the workmen denied the charges levelled against them and according to the allegations of the management, the workmen committed theft of copper wire from 35 Dip of the colliery in the night of 25-07-1999 and kept the same in a drum and on 26-07-1999 at 8 A.M., the said drum was opened in presence of some employees of party no. 1 and 15 to 20 kilograms of copper wire was found from the same and the said copper wire was the stolen wire from 35 Dip, but neither there was any Panchnama nor any report of seizure made by the officer or supervisor, who opened the drum and found the copper wire and there was also no investigation to show that the copper wire recovered from the drum matched the copper wire taken out from 35 dip and the copper wire recovered from the drum was not sealed before the witnesses to the recovery of the same and the allegations were made by the party no. 1, on the basis of presumption and in the criminal case instituted against the workmen in the Judicial Court, it had come in the evidence that the drum in question belonged to one Shri Ramsai.

It was further submitted by the learned advocate for the workmen that the enquiry officer committed error in

holding the charge of theft to have been proved against the workmen without any evidence and only basing on presumption and allegations made by party no.1 and it is clear from the materials on the record of the enquiry that party no.1 miserably failed to prove the charges levelled against the workmen and there was no direct evidence against the workmen of their committing theft of the wire or seizure of the wire from their possession or that the drum from which the alleged stolen wire was recovered belonged to them and there was total non application of mind on the part of the enquiry officer incoming to the conclusion that the workmen committed the theft of the copper wire and specially when the alleged stolen copper wire was not produced before the enquiry officer during the enquiry and the party no.1 failed to produce the documents about the ownership of the wire and issue of the same from the store, in spite of the demand made by the defence and in the criminal proceeding also, management failed to establish the ownership of the wire in question and from such facts, it is clear that the findings of the enquiry officer are perverse and not based on materials on record.

It was also submitted by the learned advocate for the workmen that two days after the alleged incident and recovery of the wire from the drum, the management lodged a report against the workmen at Rajagmar Police Station making allegations that on 28-07-1999 at about 7. A. M. the security inspector checked the plastic bag of the workmen on the road and found lead of cable from the said bag and on the basis of the said report, criminal case no. 429/2000 was instituted against the workmen and the workmen faced their trial in the court of Judicial Magistrate First Class, Korba, but they were acquitted by judgment dated 04-12-2001 and the said facts clearly show that the party no. 1 deliberately cooked up a false case against the workmen and copy of the order of acquittal passed in the criminal case was filed before the enquiry officer, but the same was not taken into consideration and the findings of the enquiry officer are without their being any concrete material and his report is one sided and such findings are baseless and no prudent man can come to such findings basing on the materials on record of the enquiry and punishment was imposed against the workmen without giving them the scope of submitting any explanation against the proposed punishment and as there was violation of the principles of naltural justice and as the misconducts have not been proved against the workman, the punishment is to be quashed and set aside and the workmen are entitled for reinstatement in service with continuity and full back wages.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 1998(3) LLN.878 :1998 LAB.I.C.-2144 (India Piston Ltd. Vs. C. Kumarswamy), 1999 I CLR-1225 (Sahkari Ganna Vikas Samiti Ltd. Vs. State of U.P. and Others), 1994 (4) LLN-917 (Sumangal Veerbaladur Rana Vs. State of Maharashtra), 1999 LAB.IC-3686 (Rameswar Prasad Vs. The Bihar State Electricity Board), 1999 LAB. IC-385 (S. Shreeraman Vs. District Judge, Madras) 1999 II CLR-412 (Sudhakar Rai Vs. Dy. Inspector General of Police another), 1991 I CLR (SC)-61 (Union of India Vs. Md. Ramzan Khan) and 1999 (2) LLN -117 (Assistant Regional Manager Vs. State of UP).

6. Per contra, it was submitted by the learned advocate for the party no. 1 that the departmental enquiry held against the workmen has already been found to be legal, proper and in accordance with the principles of natural justice and the charges of theft of copper wire and leaving the working place without permission or sufficient cause have been proved against the workmen and the findings of the enquiry officer are based on the materials on record of the enquiry and the same are not at all perverse and there is nothing on record to show that the enquiry officer was biased and the management has lost confidence on the workmen and the punishment imposed is not shockingly disproportionate and there is no scope to interfere with the punishment.

It was further submitted by the learned advocate for party no.1 that in a case, where enquiry is independent of criminal proceedings, acquittal in a criminal court is of no help and even if, a person stands acquitted by a criminal court, domestic enquiry can be held and punishment can be imposed and the workmen are not entitled to any relief.

7. Before delving into the merit of the matter, I think it necessary to mention the principles envisaged by the Hon 'ble Apex Court in different judgments in regard to the jurisdiction and power of the Tribunal to interfere with the findings in a departmental enquiry and punishment imposed against the delinquent workman.

It is well settled that departmental enquiry is not based by strict rules of Evidence Act, but by fair play and natural justice and only total absence, but not sufficiency of evidence before Tribunal is ground for interference by court. It is also well settled that interference with the finding of fact in a departmental enquiry is permissible, only when there is no material for the said conclusion or that on the materials, the conclusion cannot be that of a reasonable man.

A finding recorded in a domestic enquiry cannot be characterized as perverse by the Labour Court, unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of evidence adduced. In a domestic enquiry, once a conclusion is deducted from the evidence, it is not permissible to assail the conclusion even though, it is possible for some other authority to arrive at a different conclusion on the same evidence.

The jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent

authority either by an act of Legislature or rules made under the proviso of Article 309 or the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

8. It was submitted by the learned advocate for the workmen that besides the departmental enquiry, criminal case no. 429/2000 was instituted against the workmen for the same incident and the workmen were acquitted in the criminal case and the facts mentioned in the criminal case including the date and time of the incident were quite contradictory to the facts of the departmental enquiry and the enquiry officer did not consider such facts, while giving his findings and as such, the findings of the enquiry officer are perverse. However, on perusal of the materials on record, it is found that there is no force in the contention raised by the learned advocate for the workmen. It is found that during the departmental enquiry, not a single paper of criminal case no. 429/2000 was produced by the workmen before the enquiry officer. Moreover, it is the admitted case of the workmen that the enquiry officer submitted his report on 2-11-1999 and the order of punishment against the workmen was passed on 8-01-2000, whereas, the order of acquittal in criminal case no. 429/2000 was passed on 4-12-2001. When the judgment in the criminal case was passed after submission of the enquiry report by the enquiry officer, the question of production of the copy of judgment of the criminal case was not arise. The workmen have also not produced any document relating to criminal case no. 429/2000 before this Tribunal also. Moreover, from the pleadings made by the workmen in the statement of claim, it appears that criminal case no. 429/2000 was instituted against them not for the incident dated 25/26-7-1999, but for the incident dated 28-07-1999, when the workmen were found to be in possession of lead of cable by the security inspector.

Moreover, in this case, the departmental enquiry was independent of the criminal proceeding. There is also no material on record to hold that the charges levelled and evidence adduced in the departmental proceedings and in the criminal case against the workmen were one and the same. Hence, the acquittal of the workmen in the criminal case, if any does not have any effect to the departmental enquiry. Hence, the submission made by the learned advocate for the workmen on that score fails.

9. It was submitted by the learned advocate for the workmen that the workmen were not given any opportunity to show cause on the findings of the enquiry officer, the, order of dismissal is wrong. However, it is to be mentioned here that in the statement of claim itself at paragraph seven, the workmen have mentioned that, "on the basis of the enquiry report, show-cause notice dated 13-11-1999 was issued to the workmen calling upon them to show cause as to why they should not be punished for the misconduct proved. The workmen submitted their reply and pointed out as to how the action sought to be taken against them is unwarranted and arbitrary." It is also found from the documents on record that second show-cause notice alongwith the report of the enquiry officer was served on the workmen and they also filed their show cause to the notice. Hence, there is no force in the contention raised by the learned advocate for the workmen.

10. Applying such settled principles to the present case in hand, it cannot be said that this is a case of no evidence or that on the materials on record of the departmental enquiry, the conclusions arrived at by the Enquiry Officer cannot be that of a reasonable man. It is clear from the materials on record of the departmental proceedings that the charge of leaving the place of work without permission or sufficient cause has been proved against the workmen by direct evidence. So far the charge of theft of copper wire is concerned, even though, there is no direct evidence showing the commission of theft of copper wire by the workmen, there is sufficient circumstantial evidence against them to conclude their involvement in commission of the theft of Copper wire. It is also found from record that the enquiry officer has dealt with the charges, on the basis of the relevant materials on record and has arrived at the conclusion that the charges of commission of theft and leaving the place of work without permission or sufficient cause have been proved against the workmen. Hence, the findings of the enquiry officer cannot be said to be perverse.

As the facts and circumstances of this case are quite different from the facts and the circumstances of the cases referred in the decisions cited by the learned advocate for the workmen, with respect, I am of the view that the said decisions have no clear application to the present case.

11. On the facts of the case, it is found that the workmen have been found guilty of the charges levelled against them in a properly conducted departmental enquiry and the punishment imposed against the workmen is not shockingly disproportionate to the charges proved. So, there is no scope to interfere with the punishment. Hence, it is ordered :-

ORDER

The action of the management of SECL, Rajgamar Colliery, Dt. Korba (Chattisgarh State) in terminating the services of Shri Ramakrishna and Tika Ram, workmen w.e.f. 08-01-2000 is legal and justified. The workmen are not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एटलाण्टा इन्फ्रास्ट्रक्चर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (आईडी संख्या 7/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/170/2011-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneshwar as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Atlanta Infrastructure Limited and their workman, which was received by the Central Government on 4-1-2013.

[No. L-22012/170/2011-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 7/2012

Date of Passing Order - 6th December, 2012

L-22012/170/2011 - IR(CM-II), dated 6-1-2012

Between :

M/s. Atlanta Infrastructure Ltd.,
101, Shree Ambasanti Chambers,
Opp. Hotel Leela, Andheri Kurla Road,
Andheri East, Mumbai - 400 059

....1st Party-Management

And

Their Workman Shri Deepak Kumar Sahoo,
At./Po. Ghantapada, PS. Colliery, Angul.

....2nd Party-Workman

Appearances :

None .... For the 1st Party-Management.

None .... For the 2nd Party-Workman.

ORDER

Case taken up today. Parties are absent. The 2nd Party-workman was to file statement of claim, but neither he appeared since the reference was received in this Tribunal on 24-1-2012 nor took any pains to prosecute his case and file statement of claim though notice to him was sent thrice, two through ordinary post on 23-2-2012 and 7-5-2012 and one through registered post on 31-8-2012. The case has been lingering for the last ten months withont any action. Therefore it is presumable that either the 2nd Party-workman is not interested in the case or has amicably settled the dispute with his employer. In this view of the matter there is no reason to keep the case pending for an indefinite period without any purpose. As such no-dispute award is to be passed. Accordingly no-dispute award is passed and the reference is answered accordingly.

Dictated and Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एटलाण्टा इन्फ्रास्ट्रक्चर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (आईडी संख्या 5/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/178/2011-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 5/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneshwar as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Atlanta Infrastructure Limited and their workman, which was received by the Central Government on 4-1-2013.

[No. L-22012/178/2011-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 5/2012

Date of Passing Order - 23rd November, 2012 Lok Adalat

Between :

M/s. Atlanta Infrastructure Ltd.,
101, Shree Ambasanti Chambers, Opp: Hotel
Leela, Andheri Kurla Road, Andheri East,
Mumbai - 400 059

....1st Party-Management

And

Shri Sangram Behera,
At./Po. Purunagarh, P.S. Bantala,
Angul.

....2nd Party-Workman

Appearances:

None .... For the 1st Party-Management.

None .... For the 2nd Party-Workman.

ORDER

Case taken up today before Lok Adalat. Both the parties are absent. The present reference was received in this Tribunal/Court on 24-1-2012. The 2nd party-workman was required to file statement of claim within fifteen days of receipt of the letter of reference, but no statement of claim has yet been filed despite sending notice to the 2nd Party-workman through ordinary as well as registered post and giving six dates for the said purpose. A period of nearly ten months has elapsed. But the 2nd Party-workman has not taken trouble to file the statement of claim or put in appearance in the Tribunal/Court. Hence it appears that either the dispute has been amicably settled between the parties out of the court or the 2nd Party-workman is not at all interested to pursue the matter. It will therefore be a vain attempt to keep the case pending indefinitely without any purpose. Accordingly no dispute award is to be passed in this case and is passed.

2. Reference is answered as above.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 39/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/346/2002-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of (Murpar Project of (Umrer Area) of WCL, WCL Contractor Singhnagar Dahegaon and their workman, received by the Central Government on 4-1-2013.

[No. L-22012/346/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/39/2006 Date: 21-12-2012.

Party No. 1

(a) The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post : Khadsanghi, Teh.-Chimur,
Distt. Chandrapur (MS)

(b) M/s. Singh & Sons,
WCL Contractor, Singhnagar, Dahegaon,
Chhindwara Road, Distt. Nagpur (MS)

Versus

Party No. 2

Shri Dadaji S/o Baliram Deulakar,
aged about 32 years,
R/o Murpar, Post : Khadsangi,
Teh. -Chimur, Distt. Chandrapur, Maharashtra.

AWARD

(Dated : 21st December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of

Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Dadaji S/o Baliram Deulakar, for adjudication, as per letter No. L-22012/346/2002-IR (CM-II) dated 21-3-2006, with the following schedule:–

> "Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Dadaji S/o Baliram Deulakar is legal and justfied ? If not, to what relief he is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman Shri Dadaji Baliram Deulakar, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No.1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of party no. 1 (a) i.e. Sub-Area Manager, Murpar Project and party no. 1 (a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road up to the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the party no. 1 (a) also engaged party no.1 (b), M/s. Singh & Sons in its work w.e.f. 5-1-1997 and till party no. 1 (b) is working with party no. 1 (a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by M/s. Bharat Gold Mines Limited, Kolar Gold Fields, Karnataka State ("B.G.M.L" in short) as a Surface Trammer/Loader on 28-10-1993 and he continued to work till 2-7-1996 and thereafter, his services were utilized by party no.1 (b) w.e.f. 20-1-1997 continuously till 28-12-2001 and party no. 1 (a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/employee of party no. 1 (a) and party no. 1 (a) is the principal employer and his appointment by both the contractors was oral and the party no. 1 (b) terminated his services orally w.e.f. 29-12-2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retreachment compensation was paid to him by parties no.1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no.1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of Section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the parties no.1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as party no.1 was the principal employer and party no.1(b) was the contractor of party no.1 (a), for each and every act of the party no.1 (b), the party no. 1 (a) was responsible and as such, the party no.1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

The party no.1 (a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, party no.1 (b) neither appeared in the case nor contested the claim.

In its written statement, the party No.1 (a) has pleaded interalia that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3½ months and the incline shaft drivage within eight months and it also awarded another contract to party no.1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 1-1-1997 and 28-2-1998 respectively and after a gap of 15 months, another contract was given to party no. 1 (b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29-5-1999 and 1-12-2001 respectively and it [party no. 1(a)] was related to [party no.1(b)] only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the party no. 1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal

employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by party no. 1 (b) for contract' works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi, Union Public Service Commission Vs. Girish Jayanti [2006 (2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of party no.1 (a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to party no. 1 (b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of Section 25- F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. The workman besides placing reliance on documentary evidence filed his own evidence on affidavit in support of his claim. It is necessary to mention here that as nobody appeared on behalf of the party no.1 (a) to cross-examine the workman, on 15-11-2011, "no cross" order was passed.

It will not be out of place to mention here that on 30-1-2012, an application for grant of permission to cross-examine the workman and setting aside the exparte order, another application for dismissal of the reference on the basis of the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi, AIR 2006 SC 1806, and a pursis stating that the Tribunal has not framed the preliminary issue regarding the maintainability of the proceeding and that the proceeding is not maintainable as there existed no employer-employee relationship between WCL were filed by the learned advocate for the party No. 1. However, the said applications and pursis were rejected as not pressed as neither the advocate nor anybody else on behalf of party no.1 appeared to move the same.

5. At the time of argument, it was submitted by the learned advocate for the workman that party no.1 (a) had engaged M/s. B.G.M.L, a registered company and a Government of India Enterprises for preparation of underground roads upto the boarder of coal in Murpar Coal Mine and the said contract was from the year 1992 to 1996 and the said company had appointed the workman from 28-10-1993 to 2-7-1996 as a General Mazdoor and the workman was again appointed by party no.1 (b) from 20-1-1997 to 28-12-2001 and the workman was sent for vocational training by party no.1 (a) and as such, the workman was the employee of party no.1 and party no. 1 (a) is the principal employer and the appointment of the workman by both the contractors was oral appointment and the services of the workman were terminated by party no.1(b) w.e.f. 29-12-2001 and the workman had worked for more than 240 days with the party no.1 (b), preceding his termination and before the termination of the services of the workman, mandatory provisions of Section 25- F of the Act were not complied with and neither one month's notice, nor one month's pay in lieu of the notice, nor retrenchment compensation was given to the workman and as such, the termination of the workman is illegal and such termination amounts to retrenchment and party no. 1 (a) and 1 (b) did not prepare and publish the seniority list as required under Rule 77 of Industrial Disputes (Central) Rules, 1957, even though more than 700 workers were working with them in various category and as such, there was violation of the provisions of Section 25-G of the Act and therefore, the workman is entitled to reinstatement in service with continuity and full back wages.

6. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. So, in this case, even if the case proceeded exparte against parties no.1 (a) and 1 (b) still then, the workman is to discharge the burden by adducing evidence to show that legally he is entitled for the reliefs claimed by him.

7. In this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar Colliery by party no.1 (a) and BGML engaged him from 28-10-1993 to 02-7-1996 as a General Mazdoor and that he was again gaged by party no.1 (b), another contractor from 20-1-1997 to 28-12-2001. It is never the case of the workman that he was engaged or appointed by party no.1 (a). The only claim of the workman is that party no. 1 (a) had sent him for vocational training and he had under gone the training successfully. In support of such claim, the

workman has filed the Xerox copy of the certificate granted in his favour for undergoing the vocational training from 30-10-1993 to 25-1-1994. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of party no.1(a), as because, he was sent for vocational training by party no.1(a).

8. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour-(Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never imployed by the party no. 1 (a) and he was employed by the contractors and the party no.1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

9. So far the termination of the services of the workman by the party no. 1 (b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:-

"Though section 25- F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25- B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25 B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25- B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that, "Industrial Disputes Act (14 of 1947). Section 25- B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 day within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) has held that :

"Industrial Disputes Act (14 of 1947)– S.25-F, 10 Retrenchment compensation–Termination of services without payment of –Dispute referred to Tribunal–Case of workman/workman that he had worked for 240'days in a year preceding his termination–Claim denied by management–Onus lies upon workman to show that he had in fact worked for 240 days in a year–In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

10. So, it is, clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25- F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

11. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29-12-2001. So, it is necessary to prove that in the preceding twelve calendar months of 29-12-2001, the workman had worked for 240 days.

13. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29-12-2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25- F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 37/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था।

[सं. एल-22012/344/2002-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Murpar Project of (Umrer Area) of WCL, WCL Contractor Singhnagar Dahegaon and their workman, received by the Central Government on 4-1-2013.

[No. L-22012/344/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/37/2006 Date: 21-12-2012

Party No. 1 (a) : The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post: Khadsanghi, Tah-Chimur,
Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons,
WCL Contractor, Singhnagar, Dahegaon,
Chhindwara Road, Distt. Nagpur(MS)

Versus

Party No. 2 Shri Bharat, S/o Ganpatrao Jambhule,
aged about 34 years,
R/o.Murpar, Post: Khadsanghi,
Teh.-Chimur, Distt. Chandrapur
Maharashtra.

AWARD

(Dated: 21st December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Bharat S/o Sh. Ganpatrao Jambhule, for adjudication, as per letter No.L-22012/344/2002-IR (CM-II) dated 21-3-2006, with the

following schedule:-

"Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the service of Shri Bharat S/o Sh Ganpatrao Jambhule is legal and and Justified ? If not, to what relief he is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman Shri Bharat Ganpatrao Jambhule, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No.1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of party no. 1 (a) i.e. Sub-Area Manager, Murpar Project and party no. 1 (a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road up to the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the party no. 1 (a) also engaged party no.1 (b), M/ s. Singh & Sons in its work w.e.f. 5-1-1997 and till party no.1 (b) is working with party no. 1 (a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by M/s. Bharat Gold Mines Limited, Kolar Gold Fields, Karnatak State ("B.G.M. L" in short) as a General Mazdoor on 5-7-1992 and he continued to work till 2-7-1996 and thereafter, his services were utilized by party no. 1 (b) w.e.f. 20-1-1997 continuously till 28-12-2001 and party no.1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/ employee of party no. 1 (a) and party no. 1 (a) is the principal employer and his appointment by both the contractors was oral and the party no. 1 (b) terminated his services orally w.e.f. 29-12-2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no.1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no.1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of Setion 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of Section 25-H of the Act. It is further plaeded by the workman that he alongwith other workers had submitted charter of various demand to the parties no.1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as party no.1 was the principal employer and party no.1(b) was the contractor of party no.1 (a), for each and every act of the party no.1 (b), the party no. 1 (a) was responsible and as such, the party no.1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3.The party no.1 (a) resisted the claim by filing its written Statement. It is necessary to mention here that inspite of notice, party no. 1 (b) neither appeared in the case nor contested the claim.

In its written statement, the party No.1 (a) has pleaded inter-alia that it had entered into a contract with B.G. M. L. for carrytng out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3 1/2 months and the incline shaft drivage within eight months and it also awarded another contract to party no.1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 1-1-1997 and 28-2- 1998 respectively and after a gap of 15 months, another contract was given to party no. 1 (b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29-5-1999 and 1-12-2001 respectively and it (party no.1(a)) was related to party no.1 (b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the party no. 1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by party no.1 (b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi,

Union Public Service Commission Vs. Girish Jayanti [2006 (2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of party no. 1 (a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to party no. 1 (b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of Section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. The workman besides placing reliance on documentary evidence, filed his own evidence on affidavit in support of his claim. It is necessary to mention here that as nobody appear on behalf of the party no. 1 (a) to cross-examine the workman on 15-11-2 011, "no cross" order was passed.

It will not be out of place to mention here that on 30-1-2012, an application for grant of permission to cross-examine the workman and setting aside the exparte order, another application for dismissal of the reference on the basis of the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi, AIR 2006 SC 1806, and a pursis stating that the Tribunal has not framed the preliminary issue regarding the maintainability of the proceeding and that the proceeding is not maintainable as there existed no employer-employee relationship between WCL were filed by the learned advocate for the party No. 1. However, the said applications and pursis were rejected as not pressed as neither the advocate nor anybody else on behalf of party no.1 appeared to move the same.

5. At the time of argument, it was submitted by the learned advocate for the workman that party no.1 (a) had engaged M/s. B.G.M.L, a registered company and a Government of India Enterprises for preparation of underground roads upto the boarder of coal in Murpar Coal Mine and the said contract was from the year 1992 to 1996 and the said company had appointed the workman from 5-7-1992 to 2-7-1996 as a General Mazdoor and the workman was again appointed by party no.1 (b) from 20-1-1997 to 28-12-2001 and the workman was sent for vocational training by party no.1 (a) and as such, the workman was the employee of party no. 1 and party no. 1 (a) is the principal employer and the appointment of the workman by both the contractors was oral appointment and the services of the workman were terminated by party no.1(b) w.e.f. 29-12-2001 and the workman had worked for more than 240 days with the party no.1(b) preceding his termination and before the termination of the services of the workman, mandatory provisions of Section 25- F of the Act were not complied with and neither one month's notice, nor one month's pay in lieu of the notice, nor retrenchment compensation was given to the workman and as such, the termination of the workman is illegal and such termination amounts to retrenchment and party no. 1 (a) and 1 (b) did not prepare and publish the seniority list as required under Rule 77 of Industrial Disputes (Central) Rules, 1957, even though more than 700 workers were working with them in various category and as such, there was violation of the provisions of Section 25-G of the Act and therefore, the workman is entitled to reinstatement in service with continuity and full back wages.

6. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. So, in this case, even if the case proceeded exparte against parties no. 1 (a) and 1(b) still then, the workman is to discharge the burden by adducing evidence to show that legally he is entitled for the reliefs claimed by him.

7. In this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar colliery by party no. 1 (a) and BGML engaged him from 5-7-1992 to 2-7-1996 as a General Mazdoor and that he was again engaged by party no. 1 (b), another contractor from 20-1-1997 to 28-12-2001. It is never the case of the workman that he was engaged or appointed by party no. 1 (a). The only claim of the workman is that party no. 1 (a) had sent him for vocational training and he had under gone the training successfully. In support of such claim, the workman has filed the Xerox copy of the certificate granted in his favour for undergoing the vocational training from 2-9-1993 to 29-9-1993. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of party no.1(a), as because, he was sent for vocational training by party no.1(a).

8. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is

created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the party no. 1 (a) and he was employed by the contractors and the party no.1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory, and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

9. So far the termination of the services of the workman by the party no.1 (b) is concerned, I think it necessary to mention the principles, enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:-

"Though Section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into Section 25-B. The fiction converts service of 240 days in a period of twelve caledar months into continuous service for one complete year. The amended Section 25- B only consolidates the provisions of Section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of Section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended Section 25 B and the unamended Cl. (b) of Section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended Section 25- B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25- B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25- B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of Section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) has held that:

"Industrial Disputes Act (14 of 1947) S 25-F, 10— Retrenchment compensation-Termination of services without payment of —Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination— Claim denied by management —Onus lies upon workman to show that he had in fact worked for 240 days in a year—In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

10. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of Section 25- F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

11. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29-12-2001. So, it is necessary to prove that in the preceding twelve calendar months of 29-12-2001, the workman had worked for 240 days.

13. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29-12-2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in Section 25-F read with Section 25-B of the Act, the provisions of Section 25- F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 38/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/345/2002-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 38/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Murpar Project of (Umrer Area) of WCL, WCL Contractor Singhnagar, Dahegaon and their workmen, received by the Central Government on 4-1-2013.

[No. L-22012/345/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/38/2006 Date: 21-12-2012

Party No.1(a):

The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post: Khadsanghi, Tah -Chimur,
Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons,
WCL Contractor, Singhnagar,
Dahegaon, Chhindwara Road,
Distt. Nagpur(MS)

Versus

Party No. 2:

Shri Arun, S/o Laxman Dhadse,
aged about 29 years,
R/o.Minzhari, Post: Khadsangi,
Teh. - Chimur, Distt. Chandrapur
Maharashtra.

AWARD

(Dated: 21st December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Arun S/o. Sh. Laxman Dhadse, for adjudication, as per letter No. L-22012/345/2002-IR (CM-II) dated 21-3-2006, with the following schedule:–

"Whether the action of the management of WCL and M/ s. Singh & Sons Contractor of WCL in terminating the services of Shri Arun S/o. Sh Laxman Dhadse is legal and justifited ? If not, to what relief he is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the management of the WCL ("Party No. 1" in short) filed its written statement.

It is necessary to mention here that the workman neither filed any statement of claim nor adduced any evidence in support of his claim. However, inadvertently it has been mentioned in the record that statement of claim and evidence on affidavit was filed by the workman. It appears that such mistake was made as there were 55 cases of similar nature and the cases were being posted in batches.

3. The party no. 1 (a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, party no. 1 (b) neither appeared in the case nor contested the claim.

In its written statement, the party No. 1 (a) has pleaded inter-alia that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3½ months and the incline shaft drivage within eight months and it also awarded another contract to party no. 1 (b) for construction of drivage of a pair of incline shaft through

sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 1-1-1997 and 28-2-1998 respectively and after a gap of 15 months, another contract was given to party no. 1 (b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29-5-1999 and 1-12-2001 respectively and it [party no.1 (a)] was related to party no.1 (b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the party.no.1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by party no.1(b) for contract works at Murpar Project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi, Union Public Service Commission Vs. Girish Jayanti [2006 (2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of party no. 1 (a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to party no. 1 (b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of Section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. It will not be out of place to mention here that on 30-1-2012, an application for grant of permission to cross-examine the workman and setting aside the exparte order, another application for dismissal of the reference on the basis of the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi, AIR 2006 SC 1806, and a pursis stating that the Tribunal has not framed the preliminary issue regarding the maintainability of the proceeding and that the proceeding is not maintainable as there existed no employer-employee relationship between WCL were filed by the learned advocate for the party No. 1. However, the said applications and pursis were rejected as not pressed as neither the advocate nor anybody else on behalf of party No.1 appeared to move the same.

5. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. So, in this case, even if the case proceeded exparte against parties No.1 (a) and 1(b) still then, the workman is to discharge the burden by adducing evidence to show that legally he is entitled for the reliefs claimed by him.

As in this case, the workman has failed to file the statement of claim and to adduce any evidence, he is not entitled to any relief. Hence, it is ordered:

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (आईडी संख्या 241/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/573/1996-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 241/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 4-1-2013.

[No. L-22012/573/1996-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/241/98

Presiding Officer: SHRI MOHD. SHAKIR HASAN.

The General Secretary,
BKKMS(BMS),
PO Parasia,
Distt. Chhindwara (MP)

...Workman/Union

Versus

The Dy. CME,
Shivpuri Sub Area of WCL, PO Sivgara,
Distt. Chhindwara (MP)

...Management

AWARD

Passed on this 5th day of December, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-22012/573/96/IR(CM-II) dated 28-10-98 has referred the following dispute for adjudication by this tribunal :-

> "Whether the action of the Sub Area Manager, Shivpuri Sub Area of WCL, Distt. Chhindwara (MP) in dismissing Shri Babulal Bunkar, Clerk of Vishnupuri U/GMine No.1 w.e.f. 18-3-96 is justified ? If not, what relief the workman is entitled to?"

2. The case of the Union/workman in short is that Shri Babulal Bunker was appointed as a clerk at Shivpuri Open Cast Mine No.2. He was transferred to Vishnupuri Underground Mine. He was entrusted with number of works as the mine was newly opened. In course of internal audit, the cases of over/excess payment was detected. He was chargesheeted on 25-8-95 for twice/excess payment to the workers. He denied the charges. A departmental enquiry was initiated against him. The excess payment was recovered and there was no pecuniary loss to the company but after enquiry he was dismissed from services w.e.f. 18-3-96. It is stated that it was not a deliberate mistake rather it was committed due to pressure of work. It is stated that the punishment imposed on him was excess, harsh and disproportionate to the charge committed by him. It is submitted that the order of punishment be set aside and the workman be reinstated with full back wages.

3. The management appeared and filed Written Statement. The case of the management interalia, is that the workman was working as Clerk Gr.II at Vishnupuri Underground Mine No.1. On scrutiny of the records maintained by him, it was detected that many irregularities were committed and double payment of LL TC/L TC were made by him. He was issued with a charge sheet dated 25-8-95. His reply was unsatisfactory. The Competent Authority initiated a departmental enquiry against him. Enquiry Officer Shri V. K. Dutta, Dy.Personnel Manager was appointed. The workman decided to contest the enquiry himself. He cross-examined the management witnesses. Thereafter the workman also gave his evidence. After completion of enquiry, the Enquiry Officer submitted his report holding him guilty of the charges. The Disciplinary Authority with the findings of the Enquiry Officer passed the order of dismissal from service w.e.f. 18-3-1996. The workman preferred appeal before the Appellate Authority but the same was rejected. The punishment of dismissal from services is proportionate to the gravity of misconduct proved against the delinquent workman. It is submitted that the workman is not entitled to any relief.

4. On the basis of the pleadings, the following issues are settled on recast for adjudication:

I. Whether the departmental enquiry conducted by the management against the workman is legal and proper?

II. Whether the punishment imposed on the workman is proportionate to the charges committed by him.

III. To what relief the workman is entitled?

5. Issue No. I

This issue is taken up as preliminary issue earlier. On perusal of the order dated 19-7-2010, it is clear that no illegality in the departmental enquiry is found and the departmental enquiry is held legal and proper. Thus this issue is already decided earlier against the workman and in favour of the management.

6. Issue No. II

Now the only question for determination is as to whether the punishment awarded to the workman by the management is disproportionate to the charges. In this case, no fresh evidence is adduced. The parties have relied on the materials recorded in the departmental enquiry. It is submitted on behalf of the management that the charges of misconduct proved against the workman is serious in nature and therefore the punishment is not harsh and disproportionate. Considering the submission made above and the misconduct proved against the workman, I donot find any reason to interfere in the order dated 18-3-1996 of punishment. This issue is decided against the workman and in favour of the management.

7. Issue No. III

On the basis of the discussion made above, I find that the workman is not entitled to any relief. The reference is accordingly answered.

8. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (आईडी संख्या 275/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/198/1996-आईआर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 275/1997) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 4-1-2013.

[No. L-22012/198/1996-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/275/97

Presiding Officer : Shri Mohd. SHAKIR HASAN

Shri Ravi Dutt Shorey,
S/o Late Shri Nandlal Shorey,
Pit Supervisor (Excv.),
R/o Quarter No. 2A/71 of
Bishrampur Colliery,
PO Bishrampur,
Distt. Surguja (MP) .....Workman

Versus

General Manager,
Bishrampur Area,
South Eastern Coalfields Limited,
PO Bishrampur Colliery,
Distt. Surguja (MP) ....Management

AWARD

Passed on this 29th day of November, 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/198/96-IR(C-II) dated 29-9-97 has referred the following dispute for adjudication by this tribunal :—

" Whether the demand of Indian Black Diamond Workers Federation for change of date of birth of Shri R.D.Shorey, Pit Supervisor (Retd.) Bishrampur Opencast Mines from 19-1-36 to 12-12-36 is legal and justified? If so, to what relief is the workman entitled?"

2. The case of the Union/workman in short is that he was initially appointed as Excavator Operator on 20-1-1960 at Korea Colliery of erstwhile owner of the National Coal Development Corporation (NCDC). He submitted his original date of birth certificate (School Leaving Certificate) issued by Government Higher Secondary School, Bassikalan which was recorded as 12-12-1936. This was also entered in his service book of Korea Colliery but lateron some interpolation was made and after erasing the original date of birth a remark was made as 24 years as on 20-1-1960 without giving any notice. The workman came to know in November 1983 that his date of birth had been altered as 24 years as on 20-1-1960. He submitted representation immediately for correction of his date of birth to the Sub Area Manager as per School Leaving Certificate but no action was taken. Again he filed a representation on 15-3-1993 to the General Manager requested him to correct the date of birth as 12-12-1936. The management refused to correct the date of birth on 21-1-95. It is submitted that the management be directed to correct the date of birth and to pay the wages with all consequential benefits.

3. The management appeared and filed Written Statement. The case of the management, interalia, is that the workman was admittedly appointed on 20-1-60 in Kurasia Collieiry. as Excavator. He had not submitted any educational certificate at the time of initial appointment. The workman was examined by the Doctor where he had declared his age as 24 years as on 20-1-1960 which corresponds his age as 19-1-1936. He had not given any application for change of his in the year 1983. The workman for the first time represented on 15-3-93 and produced School Leaving Certificate on 1-9-93 which was issued in 1993. The said School Leaving Certificate cannot be accepted as per I.I.No.76. The case of the workman was not referred to the Determination Committee as the document filed was not reliable. It is submitted that the superannuation of the workman on 19-1-1996 is legal, justified and fair.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

I. Whether the demand of the Union for change of date of birth of Shri R.D. Shorey, Pit Supervisor from 19-1-36 to 12-12-36 is legal and justified?

II. To what relief the workman is entitled?

5. **Issue No. I**

To prove the case, the workman has examined oral and documentary evidence. The workman Shri Ravi Dutt

Shotey has supported his case in his evidence. He has corroborated this fact that he was initially appointed in 1960 in Korea Colliery of NCDC and he had disclosed his date of birth. He has further stated that he had not submitted any certificate at that very time. His evidence supports the case of the management that at the time of initial appointment he had declared his age as 24 years which comes to the date of birth as 19-1-1936. He has further stated that in 1983 he came to know about his date of birth but there is no paper to corroborate this fact that he had raised dispute of his age in 1983. Again he has stated that he came to know about his age at the time of retirement. Thus his evidence shows that the dispute of age was raised by the workman at the tag end of his service though he had knowledge of his age. It is also clear that at the initial time of appointment, he had himself declared his age and no certificate was produced for his age as has been claimed by the workman.

6. Now the documentary evidence adduced by the workman is to be examined carefully to determine the point for consideration. Exhibit W/1 is a letter dated 30/31-8-95 issued by the management to the workman whereby he was informed that he is attaining the age of 60 years on 19-1-96 and is retiring on that day. This shows that the management has intimated his age to the workman. Exhibit W/2 is the letter dated 17-3-93 given by the workman to the management whereby he had requested to correct the date of birth as 12-12-1936. Exhibit W/3 is the letter dated 21/22-9-95 of the management to the workman whereby he was informed by the management that after careful examination of the record, his date of birth is 19-1-36 as per service book and Excerpt. This document clearly shows that the record available with management clearly shows that his date of birth was recorded as 19-1-1936. Exhibit W/4 is the reply of the management to the Assistant Labour Commissioner where the workman raised dispute of his age. The reply also corroborates the case of the management. The reply further shows that the workman filed a copy of School Leaving Certificate in support of his case that his date of birth is 12-12-1936 but the said school leaving certificate was not acceptable as per I.I. No. 76 and was not authentic certificate. This further shows that his age was recorded at the time of initial appointment on the basis of medical examination and as per service excerpt. Exhibit W/5 is the failure report given by the ALC to the Ministry. Exhibit W/6 is the order of the Ministry whereby the Ministry had declined to refer the dispute to the Tribunal for adjudication. Exhibit W/7 is the order dated 27-8-97 of the Hon'ble High Court passed in M.P. 2929/97 whereby the Hon'ble Court had directed the Ministry to refer the dispute to the Tribunal. Exhibit W/8 is the reference order to the Tribunal for adjudication. The workman has not filed any document to substantiate his case that his date of birth is 12-12-1936. The above documents filed by the workman are also admitted by the management. These documents support the case of the management.

7. The management has also adduced oral and documentary evidence in the case. The management witness Shri S.Anantha Krishnan is working as Sr.Manager (Personnel) at Bisrampur OCM Sub Area of SECL. He has supported the case of the management. He has stated that his date of birth was recorded as 19-1-1936 as per the medical certificate. The workman made a representation on 15-3-93 for correction of his date of birth without any certificate. Subsequently he had produced School Leaving Certificate which was issued on 1-9-93 and such certificate was inadmissible under I.I.No. 37 and 76. His evidence clearly shows that the claim of the workman for correction of his age was only on the basis of School Leaving Certificate which is not tenable under I.I. No. 37 and 76. His evidence clearly shows that his age was recorded on the basis of medical examination and his service excerpt.

8. The management has adduced documentary evidence. Exhibit M/1 and M/6 to M/13 is the service book of the workman. This service book shows that his date of birth is recorded as 19-1-1936 as per medical certificate. He had also signed on the service book. Exhibit M/2 is the fixation of pay. Exhibit M/3 is the medical certificate issued on 19-1-1960 at the time of initial appointment where he has declared his age as 24 years as on 19-1-1960 and the assessment of the age of the doctor was also 24 years. Exhibit M/4 is the letter dated 2-3-64 by Sr. Executive Engineer, Kurasia to the Ex. Engineer, Korea Colliery for opening of service book and forwarded his medical certificate. Exhibit M/5 is the Service Excerpt of the workman. The Excerpt also shows that his date of birth was recorded as 19-1-1936. The workman signed over the said excerpt on 5-8-87 conforming the entry as correct. This shows that he had not raised any dispute of his age in 1987 when objection was invited from the workman. Exhibit M/14 is the pay fixation sheet. Exhibit M/15 is the record sheet of qualification and experience. Thus the documentary evidence of the management also shows that his age was recorded in the service record on the basis of medical certificate and the service excerpt was served on the workman indicating his date of birth but the workman did not raise any dispute of age till 1987 and accepted it by doing signature on the excerpt sheet. This issue is decided in favour of the management and against the workman.

9. **Issue No. II**

On the basis of the discussion made above, it is clear that the demand of the Union/workman for change of the date of birth from 19-1-1936 to 12-12-1936 is not justified. The workman is not entitled to any relief. The reference is accordingly answered.

10. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (आईडी संख्या 67/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/98/2001-आईआर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Ambara Colliery of WCL and their workman, received by the Central Government on 4-1-2013.

[No. L-22012/98/2001-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/67/02

Presiding Officer : Shri Mohd. Shakir Hasan

Authorised Representative of
M.P.K.K.M.P. (HMS),
PO Junnardeo,
Chhindwara (MP) .....Workman

Versus

The Manager,
Ambara Colliery of WCL,
PO Palachourai,
Chhindwara ....Management

AWARD

Passed on this 13th day of December, 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/98/2001-IR(CM-II) dated 17-4-2002 has referred the following dispute for adjudication by this tribunal :

> " Whether the action of the Manager, Ambara Colliery of WCL, Kanhan area, Distt. Chhindwara in converting Shri Santosh S/o Shri Ram Sahay from piece rated to time rated without protecting his basic wages from May, 1999 as per the policy of WCL is legal and justified? If not, to what relief Shri Santosh S/o Ram Sahay is entitled to?"

2. The case of the Union/workman in short is that the workman Shri Santosh was initially appointed as Badli Loader in 1976. Subsequently he was regularized as Loader from 1-1-1981. The wages payable to the workman is governed by the National Coal Wage Agreement (in short NCWA). The workman was paid Piece rated wages in accordance with NCWA-III. It is stated that during employment, the workman became unable to perform hard job. He applied for alternative job vide application dated 11-9-95. Subsequently on recommendation of the Medical Board, he was given alternate job on surface vide order dated 9-3-96 and was paid salary of Category I. It is stated that in absence of any agreement or Form "H" settlement the wages of the workman was reduced from the date of his conversion from piece rated to time rated. The workman raised dispute through Union for protection of group wages of loader in time rated category as per the policy in circular order dated 29-1-87 and agreement dated 2-11-92. It is stated that no option was sought from the workman for conversion from piece rate to time rate. On these grounds, it is submitted that the Hon'ble Tribunal be pleased to hold that the workman is entitled to wage protection with full back wages and all other consequential benefits.

3. The management appeared and filed Written Statement. The case of the management interalia is that the workman Shri Santosh was admittedly appointed as piece rated tub loader in Group V-A from 1-1-1981 and worked till 1995. In the year 1995, he submitted an application that he was unable to perform Tub loader due to ill health and requested for medical examination by the Medical Board. His application was sent to the Medical Board for his examination. In the meantime he filed an application requesting for alternative employment in time rated. The management considered his request on humanitarian grounds and provided him alternative job. The Medical Board recommended the case of the workman in his report dated 14/15-2-96 for alternative job on surface and declared him unfit for his original job as Tub loader. He was allowed on alternative job at surface in time rated Category-I. After alternative job of Cat-I the workman again filed an application dated 23-4-96 for another better job. On his own request he was deployed as chowkidar at monthly rated Grade-"H" and is regularized and is still continuing in the job. His wages was fixed at midpoint fixation benefit of Grade "H" as per Settlement dated 31-10-95 which was circulated vide order dated 17-11-95. The workman is not entitled to the pay protection as claimed by him and was informed vide letter No. Ambara/99/4508 dated 31-5-99. It is submitted that the action of the management be held justified.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

I. Whether the action of the management in converting the workman from piece rated to time rated without protecting his basic wages from May 1999 as per policy of WCL is legal and justified ?

II. To what relief the workman is entitled ?

5. **Issue No. I**

To prove the case, the workman has himself examined in the case. He has stated that he gave an application dated 11-9-95 for light job and accordingly he was given job on surface on 9-3-96. He was also getting pay of Tub loader Gr. V-A . This shows that he had himself given option to change in light job. He has further stated that without any settlement, his pay was converted from piece rated to time rated which was against the provision of NCWA-III. No such provision is filed by the workman. He has stated at para-16 that he was appointed as tub loader and the work of tub loader is of underground. The work on the surface is easier than the work of underground. He has stated that CMD, Kanhan Area declared him unfit for underground job. He has stated that he was suffering from heart decease. He was also examined by the Apex Medical Board. Thus his evidence clearly shows that he had himself applied vide application dated 11-9-95 for lighter job and he was given lighter job on surface. Moreover it appears that he was not suffering from the decease in discharge of his job. He was also not found fit medically for discharging the job of tub-loader.

6. The workman has also adduced documentary evidence in the case. Exhibit W/1 is the application dated 11-9-95 of the workman to the Personnel officer stating therein that he is suffering from heart decease as such his case be referred to Apex Medical Board for alternate job. This shows that he himself desired to work alternate job on account of his ill health. Exhibit W/2 is the proforma whereby his case was referred for medical examination and also the report of Dy. Chief Medical Officer to Dy. Chief Personnel Manager on the basis of the examination of the Apex Medical Board. The report shows that the workman was recommended for alternate job on surface. Exhibit W/3 is office order dated 9-3-96 whereby the workman was allowed to work alternate job on surface on the recommendation of Apex Medical Board and also vide circular No. WCL/IR/NP/23-2681 dated 1-2-91. It also appears that he was entitled pay of alternate job of Cat No. I. This office order clearly shows and corroborate the case of the management that he was offered alternate job on surface of the pay scale of category-I after conversion form Tub Loader. The evidence shows that he accepted the same and joined the said post of Category-I. Exhibit W/4 is the letter dated 21-6-99 of Mines Manager to the workman whereby his wages was fixed in accordance with the circular on mid point. Exhibit W/5 is the letter dated 24-8-1999 of the Sub Area Manager to the workman whereby he was informed that on his request on account of his illness he was given from piece rated to time rated light job. These documents clearly show that the management considered his case on his request and offered light job of time rated and the wages were fixed on midpoint in view of the circular.

7. Exhibit W/6 is the copy of the letter circular dated 16/19-11-87 of the management for mode of fixation of pay when piece rated employees are provided with time rated jobs. The guidelines is reproduced as under—

> "When time-rated job is provided to a piece rated employee on the written request of the said employee, he shall be paid starting basic pay of the relevant time rated post."

Thus it is clear that the workman is entitled the starting basic pay of the post of Category-I as he had given written request for light job. However he had been fixed on mid point on the scale on the basis of subsequent settlement. Exhibit W/7 is the letter dated 13-12-92 of the Personal Manager to Sub Area Managers and others for implementation of agreement arrived between the WCL and RKKMS dated 2-11-92. Exhibit W/8 is the settlement dated 2-11-92 between WCL and RKKMS. This is filed to show that the workman is of another Union and the said settlement is not applicable to this workman. However the fixation of pay appears to have been done vide Circular No. WCL/IR/NP/23-2681 dated 1-2-91 and not only on the letter and settlement as in Exhibit W/7 and W/8. The workman has also filed documents which are marked as Exhibit W/9 and W/10 respectively which are record note of discussion held between the management of WCL and RKKMS on 31-10-1995. The workman has submitted that he is member of HMS Union and the said Union was not party to the discussion and has not relied the conclusion of the discussion. Exhibit W/11 is the protest letter dated 12-4-96 of the workman to the Manager whereby he had alleged that he got less wages in March 96. Exhibit W/12 and W/12(a) are the letters of the workman to the management whereby he had protested the deduction of wages on conversion from Tub Loader to Category-I on surface. Thus the oral and documentary evidence of the workman show that he gave written request to the management for light job on account of his heart ailment. He was examined by the Medical Board and was recommended for alternate job on surface. He has offered Mazdoor Cat-I on surface and was accepted by him. His wages was fixed in accordance with the circular as has been discussed earlier.

8. On the other hand, the management has also adduced oral and documentary evidence in the case. The management witness Shri Chandra Pratap Tiwari is working as Sr. Manager (Mines)/Colliery Manager in Ambara Colliery. He has also admitted that the employees working in the Coal industry are governed by the provision of NCWA, Standing orders and settlement arrived at between

the management and Union. He has also supported this fact that the workman submitted an application dated 23-4-96 for conversion of his post for light job as he was unable to perform as Tub Loader due to health reason. He was examined by the Medical Board who recommended to provide alternative job. He has stated that the workman had also earlier filed an application dated 11-2-95 for alternate job. This shows that the workman gave written request repeatedly for conversion of his job from Tub Loader to lighter job and the matter was examined by the Apex Medical board who also recommended for alternate job on surface. He has further stated that as per circular dated 11-2-99 he was paid wages of Cat-I with SPRA upto September 1996 . Thereafter due to clerical error, he was paid group wages from 1-10-96 to April 1999 after allowing him alternative job of Cat-I. He has further stated that the workman applied on 23-4-96 for getting another better job. At his request, he was given the job of chowkidar on monthly rated Grade-H. Subsequently he was regularized on the said post and his pay was fixed at midpoint fixation benefit of Grade-II as .per settlement. His evidence corroborates the case of the management that the workman had himself opted for light job and on the recommendation of the medical board, he was given light job. It appears that the pay was fixed as per settlement at midpoint fixation benefit of Grade-H.

9. The management has also adduced documentary evidence in the case. Exhibit M/1 is the application dated 11-9-95 given to the management. This document is also filed by the workman which is marked as Exhibit W/1. This shows that the workman had given written request to change his job on account of ill-health. Exhibit M/2 and Exhibit M/3 are also the same documents which are also filed by the workman and is marked as Exhibit W/2. The relevancy is already earlier discussed. Exhibit M/4 is the letter dated 25-2-96 of the Area Personnel Manager, Kanhan Area to Dy.General Manager WCL, Nagpur for approval of the competent Authority for conversion of the employees including the workman to provide alternative job in view of the recommendation of the Apex Medical Board. This is filed to show that the workman was provided alternative job from Tub loader.

10. Exhibit M/5 is the office order dated 9-3-96. This office order is also filed by the workman which is marked as Exhibit W/3. The relevancy is already discussed earlier. Exhibit M/6 is another application dated 23-4-96 given to the management for better job. This fact corroborates the case of the management that subsequently written request was made by the workman and the management gave the job of chowkidar on monthly rated.

11. Exhibit M/7 is letter dated 31-5-99 whereby the workman was informed that he had been paid on the basis of settlement dated 31-10-95 on the principle of mid point. The learned counsel for the workman has submitted that the said settlement was not done with the HMS Union and as such it is not binding on the workman. Now the important question is as to whether the said settlement is applicable to the workman or not. Exhibit M/8 is the discussion note and its decision taken by the joint committee on 10-4-1999. The said discussion and report shows that the representative of the HMS Union had also participated in the meeting and also decided regarding fixation of wages of piece rated worker on changing of his post. Para 9(1) shows as follows—

"वेतन निर्धारण संबंधी चर्चा के उपरांत यह निर्णय लिया गया कि 30-10-95 को मुख्यालय स्तर पर हुए समझौते के अनुसार जो पीसरेट कामगार जिस हाजरी काम में जाएंगे उसके मिड बेसिक में फिक्सेशन तय किया जाएगा ।"

This shows that the earlier settlement done between the management and the RKKMS Union is agreed to be implemented on the workers of HMS Union also in the said meeting and it was decided to fix the pay on the midpoint on account of change of job. This shows that the management is justified in fixing the wages of the workman on midpoint of Grade-H. Thus the oral and documentary evidence of the management establish the case of the management that the workman applied for lighter job on account of ill health which was not arisen in connection of his job and was recommended by the Apex Medical Board for alternate job on surface. It is also clear that the fixation of wages on the principle of mid point was subsequently agreed by the Union of the workman. This shows that the fixation of pay by the management is justified. This issue is decided against the workman and in favour of the management.

12. **Issue No. II**

On the basis of the discussion made above, it is evident that the action of the management is justified and the workman is not entitled to any relief. The reference is accordingly answered.

13. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 252.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 36/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/343/2002-आईआर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 36/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Murpar Project of (Umrer Area) of WCL, WCL Contractor, Singhnagar, Dahegaon, and their workman, received by the Central Government on 4-1-2013.

[No. L-22012/343/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/36/2006 Date: 21-12-2012

Party No. 1 (a) : The Sub Area Manager, WCL Murpar Project of (Umrer Area) of WCL, Post: Khadsanghi, Tah-Chimur, Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons, WCL Contractor, Singhnagar, Dahegaon, Chhindwara Road, Distt. Nagpur (MS)

Versus

Party No. 2 : Shri Rambhau S/o Pandurang Savsakade, aged about 32 years, R/o.Murpar, Post: Khadsanghi, Teh. -Chimur, Distt. Chandrapur Maharashtra.

AWARD

(Dated: 21st December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Rambhau S/o Pandurang Savsakade, for adjudication, as per letter No. L-22012/343/2002-IR (CM-II) dated 21-03-2006, with the following schedule :—

> "Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Rambhau S/o Pandurang Savsakade is legal and justified? If not, to what relief he is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman Shri Rambhau Pandurang Savsakade, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C.Ltd. Murpar Project" and the same is under the control and supervision of party no. 1 (a) i.e. Sub-Area Manager, Murpar Project and party no. 1 (a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road upto the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the party no. 1 (a) also engaged party no. 1 (b), M/s. Singh & Sons in its work w.e.f. 5-1-1997 and till party no. 1 (b) is working with party no. 1 (a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by M/s. Bharat Gold Mines Limited, Kolar Gold Fields, Karnatak State ("B.G.M.L" in short) as a General Mazdoor on 4-5-1992 and he continued to work till 2-7-1996 and thereafter, his services were utilized by party no. 1 (b) w.e.f. 20-1-1997 continuously till 28-12-2001 and party no.1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/employee of party no. 1 (a) and party no. 1 (a) is the principal employer and his appointment by both the contractors was oral and the party no. 1 (b) terminated his services orally w.e.f. 29-12-2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no.1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no.1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of Section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of Section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the parties no.1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as party no.1 was the principal employer and party no.1 (b) was the contractor of party no.1 (a), for each and every act of the party no.1 (b), the

party no.1(a) was responsible and as such, the party no.1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party no.1 (a) resisted the claim by filing its written statement. It is necessary to mention here that in-spite of notice, party no. 1 (b) neither appeared in the case nor contested the claim.

In its written statement, the party No. 1(a) has pleaded inter-alia that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3½ months and the incline shaft drivage within eight months and it also awarded another contract to party no. 1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 1-1-1997 and 28-2-1998 respectively and after a gap of 15 months, another contract was given to party no.l(b) for construction of drivage of incline shaft at Murpar project and the dates of. commencement and completion of the said contract were 29-5-1999 and 1-12-2001 respectively and it [party no. 1(a)] was related to party no. 1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the party no. 1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by party no.1(b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi, Union Public Service Commission Vs. Girish Jayanti [2006 (2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of party no.l(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to party no. 1 (b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of Section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. The workman besides placing reliance on documentary evidence filed his own evidence on affidavit in support of his claim. It is necessary to mention here that as nobody appeared on behalf of the party no. 1 (a) to cross-examine the workman, on 15-11-2011, "no cross" order was passed.

It will not be out of place to mention here that on 30-1-2012, an application for grant of permission to cross-examine the workman and setting aside the exparte order, another application for dismissal of the reference on the basis of the judgment of the Hon 'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi, AIR 2006 SC 1806, and a pursis stating that the Tribunal has not framed the preliminary issue regarding the maintainability of the proceeding and that the proceeding is not maintainable as there existed no employer-employee relationship between WCL were filed by the learned advocate for the party No. 1. However, the said applications and pursis were rejected as not pressed as neither the advocate nor anybody else on behalf of party no. 1 appeared to move the same.

5. At the time of argument, it was submitted by the learned advocate for the workman that party no. 1 (a) had engaged M/s. B.G.M.L, a registered company and a Government of India Enterprises for preparation of underground roads upto the boarder of coal in Murpar Coal Mine and the said contract was from the year 1992 to 1996 and the said company had appointed the workman from 5-5-1992 to 2-7-1996 as a General Mazdoor and the workman was again appointed by party no. 1 (b) from 20-1-1997 to 28-12-2001 and the workman was sent for vocational training by party no. 1 (a) and as such, the workman was the employee of party no. 1 and party no. 1 (a) is the principal employer and the appointment of the workman by both the contractors was oral appointment and the services of the workman were terminated by party no.1(b) w.e.f. 29-12-2001 and the workman had worked for more than 240 days with the party no.1(b), preceding his termination and before the termination of the services of the workman, mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice, nor one month's pay in lieu of the notice, nor retrenchment compensation was given to the workman and as such, the

termination of the workman is illegal and such termination amounts to retrenchment and party no. 1 (a) and 1 (b) did not prepare and publish the seniority list as required under Rule 77 of Industrial Disputes (Central) Rules, 1957, even though more than 700 workers were working with them in various category and as such, there was violation of the provisions of Section 25-G of the Act and therefore, the workman is entitled to reinstatement in service with continuity and full back wages.

6. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. So, in this case, even if the case proceeded exparte against parties no. 1 (a) and 1 (b) still then, the workman is to discharge the burden by adducing evidence to show that legally he is entitled for the reliefs claimed by him.

7. In this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar Solliery by party no. 1 (a) and BGML engaged him from 4-5-1992 to 2-7-1996 as a General Mazdoor and that he was again engaged by party no. 1(b), another contractor from 20-1-1997 to 28-12-2001. It is never the case of the workman that he was engaged or appointed by party no. 1 (a). The only claim of the workman is that party no. 1 (a) had sent him for vocational training and he had under gone the training successfully. In support of such claim, the workman has filed the Xerox copy of the certificate granted in his favour for undergoing the vocational training from 2-9-1993 to 29-9-1993. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of party no. 1 (a), as because, he was sent for vocational training by party no. 1 (a).

8. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the party no.1(a) and he was employed by the contractors and the party no.1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsisten t plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

9. So far the termination of the services of the workman by the party no. 1 (b) is concerned, I think it necessary to mention the principles, enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their Workmen) have held that :—

"Though Section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into Section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended Section 25- B only consolidates the provisions of Section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of Section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended Section 25 B and the unamended Cl. (b) of Section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended Section 25- B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2) - Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25- B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that Section 25- B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of Section 25-B and chapter V-A".

The Hon 'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/ s. Essen Deinay Vs. Rajeev Kumar) has held that :

"Industrial Disputes Act (14 of 1947 - S.25-F, 10—Retrenchment, compensation—Termination of services without payment of—Dispute referred to Tribunal—Case of workman/workman that he had worked for 240 days in a year preceding his termination- Claim denied by management—Onus lies upon workman to show that he had in fact worked for 240 days in a year—In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

10. So, it is, clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of Section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

11. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon 'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29.12.2001. So, it is necessary to prove that in the preceding twelve calendar months of 29-12-2001, the workman had worked for 240 days.

12. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29-12-2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in Section 25-F read with Section 25-B of the Act, the provisions of Section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 253.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (आईडी संख्या 12/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/121/2003-आईआर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 253.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 12/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the employer in relation to the management of MCL, and their workman, which was received by the Central Government on 4-1-2013.

[No. L-22012/121/2003-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri J. Srivastava, Presiding Officer,
C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 12/2004

Date of Passing Order - 3rd December, 2012

Between :

The General Manager,
Orient Area, Mahanadi Coalfields Limited,
At./Po. Brajrajnagar, Dist. Jharsuguda (Orissa)
Jharsuguda-768216.

.....1st Party-Managements

And

The General Secretary,
Brajrajnagar Coal Mines Workers Union,
P.O. Orient Area, Via. Brajrajnagar,
Dist. Jharsuguda.

.....2nd Party-Union

Appearances :

None ... For the 1st Party-Management

Shri D. Mohanta, Vice President B.C.M.W. Union ... For the 2nd Party-Union.

ORDER

After contesting the case for nearly eight years good sense prevailed on the parties on offering employment to the disputant workman by the 1st Party-Management subject to withdrawal of the present case. Accordingly the 2nd Party-Union has moved an application for dropping the proceedings of the present case as not pressed. The authorized representative of the 1st Party-Management has signed the application, but has not endorsed any objection. As such the application of the 2nd Party-Union for dropping the proceedings of the case is allowed. Since there remains no industrial dispute to be adjudicated upon in the present circumstances, no dispute award is passed and the reference is answered accordingly.

Dictated and Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 254.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 35/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/169/2003-आईआर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 254.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Murpar Project of (Umrer Area) of WCL, Contractor, Singhnagar, Dahegaon, and their workman, received by the Central Government on 4-1-2013.

[No. L-22012/169/2003-IR (CM-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/35/2006 Date: 21-12-2012

Party No. 1 (a) : The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post: Khadsanghi, Tah-Chimur,
Distt. Chandrapur (MS)

(b) M/s. Singh & Sons,
WCL Contractor, Singhnagar,
Dahegaon,
Chhindwara Road, Distt. Nagpur(MS)

Versus

Party No. 2 Shri Kawadu S/o Kashiram Dhadse,
aged about 29 years,
R/o. Minzhari, Post: Khadsangi,
Teh. -Chimur, Distt. Chandrapur
Maharashtra

AWARD

(Dated: 21st December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Kawadu S/o Kashiram Dhadse, for adjudication, as per letter No. L-22012/169/2003-IR (CM-II) dated 21-03-2006, with the following schedule :—

"Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Kawadu S/o Kashiram Dhadse is legal and justified? If not, to what relief he is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman Shri Kawadu Kashiram Dhadse, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C.Ltd. Murpar Project" and the same is under the control and supervision of party no. 1 (a) i.e. Sub-Area Manager, Murpar Project and party no. 1 (a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road upto the border of coal for the said coal mine and the contract of the said work was from 1992 to

1996 and the party no. 1 (a) also engaged party no. 1 (b), M/ s. Singh & Sons in its work w.e.f. 5-1-1997 and till party no. 1 (b) is working with party no. 1 (a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by M/s. Bharat Gold Mines Limited, Kolar Gold Fields, Karnatak State ("B.G.M.L" in short) as a General Mazdoor on 17-8-1993 and he continued to work till 2-7-1996 and thereafter, his services were utilized by party no. 1 (b) w.e.f. 20-1-1997 continuously till 28-12-2001 and party no.1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/ employee of party no. 1 (a) and party no. 1 (a) is the principal employer and his appointment by both the contractors was oral and the party no. 1 (b) terminated his services orally w.e.f. 29-12-2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no.1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no.1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of Section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of Section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the parties no.1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December, 2001 was not paid to him and as party no.1 was the principal employer and party no.1 (b) was the contractor of party no.1 (a), for each and every act of the party no.1 (b), the party no.1(a) was responsible and as such, the party no.1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party no.1 (a) resisted the claim by filing its written statement. It is necessary to mention here that in-spite of notice, party no. 1 (b) neither appeared in the case nor contested the claim.

In its written statement, the party No. 1 (a) has pleaded inter-alia that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3½ months and the incline shaft drivage within eight months and it also awarded another contract to party no. 1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 1-1-1997 and 28-2-1998 respectively and after a gap of 15 months, another contract was given to party no.1(b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29-5-1999 and 1-12-2001 respectively and it [party no. 1 (a)] was related to party no. 1 (b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the party no. 1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by party no.1(b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi, Union Public Service Commission Vs. Girish Jayanti [2006 (2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of party no.1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to party no. 1 (b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of Section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. The workman besides placing reliance on documentary evidence filed his own evidence on affidavit in support of his claim. It is necessary to mention here that as nobody appeared on behalf of the party no. 1 (a) to

cross-examine the workman, on 15-11-2011, "no cross" order was passed.

It will not be out of place to mention here that on 30-1-2012, an application for grant of permission to cross-examine the workman and setting aside the exparte order, another application for dismissal of the reference on the basis of the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi, AIR 2006 SC 1806, and a pursis stating that the Tribunal has not framed the preliminary issue regarding the maintainability of the proceeding and that the proceeding is not maintainable as there existed no employer-employee relationship between WCL were filed by the learned advocate for the party No. 1. However, the said applications and pursis were rejected as not pressed as neither the advocate nor anybody else on behalf of party no. 1 appeared to move the same.

5. At the time of argument, it was submitted by the learned advocate for the workman that party no. 1 (a) had engaged M/s. B.G.M.L, a registered company and a Government of India Enterprises for preparation of underground roads upto the boarder of coal in Murpar Coal Mine and the said contract was from the year 1992 to 1996 and the said company had appointed the workman from 17-08-1993 to 2-7-1996 as a General Mazdoor and the workman was again appointed by party no. 1 (b) from 20-1-1997 to 28-12-2001 and the workman was sent for vocational training by party no. 1 (a) and as such, the workman was the employee of party no. 1 and party no. 1 (a) is the principal employer and the appointment of the workman by both the contractors was oral appointment and the services of the workman were terminated by party no.1(b) w.e.f. 29-12-2001 and the workman had worked for more than 240 days with the party no.1(b), preceding his termination and before the termination of the services of the workman, mandatory provisions of section 25-F of the Act were not complied with and neither one month's notice, nor one month's pay in lieu of the notice, nor retrenchment compensation was given to the workman and as such, the termination of the workman is illegal and such termination amounts to retrenchment and party no. 1 (a) and 1 (b) did not prepare and publish the seniority list as required under Rule 77 of Industrial Disputes (Central) Rules, 1957, even though more than 700 workers were working with them in various category and as such, there was violation of the provisions of section 25-G of the Act and therefore, the workman is entitled to reinstatement in service with continuity and full back wages.

6. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. So, in this case, even if the case proceeded exparte against parties no. 1 (a) and 1 (b) still then, the workman is to discharge the burden by adducing evidence to show that legally he is entitled for the reliefs claimed by him.

7. In this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar colliery by party no. 1 (a) and BGML engaged him from 17-08-1993 to 2-7-1996 as a General Mazdoor and that he was again engaged by party no. 1(b), another contractor from 20-1-1997 to 28-12-2001. It is never the case of the workman that he was engaged or appointed by party no. 1 (a). The only claim of the workman is that party no. 1 (a) had sent him for vocational training and he had under gone the training successfully. In support of such claim, the workman has filed the Xerox copy of the certificate granted in his favour for undergoing the vocational training from 2-9-1993 to 29-9-1993. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of party no. 1 (a), as because, he was sent for vocational training by party no. 1 (a).

8. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the party no.1(a) and he was employed by the contractors and the party no.1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that

he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

9. So far the termination of the services of the workman by the party no. 1 (b) is concerned, I think it necessary to mention the principles, enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that :—

"Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25- B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25-B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2) - Continuous service-Scope of sub-sections (1) and (2) is different. (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25- B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25- B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) has held that :

"Industrial Disputes Act (14 of 1947 — S. 25-F, 10— Retrenchment, compensation—Termination of services without payment of—Dispute referred to Tribunal—Case of workman/workman that he had worked for 240 days in a year preceding his termination-Claim denied by management—Onus lies upon workman to show that he had in fact worked for 240 days in a year—In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

10. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

11. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon 'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29-12-2001. So, it is necessary to prove that in the preceding twelve calendar months of 29-12-2001, the workman had worked for 240 days.

13. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29-12-2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in section 25-F read with section 25-B of the Act, the provisions of section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 4 जनवरी, 2013

का.आ. 255.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 1357/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-12011/44/2007-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 4th January, 2013

S.O. 255.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1357/2008) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank, and their workman, which was received by the Central Government on 4-1-2013.

[No. L-12011/44/2007-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri A.K. RASTOGI, Presiding Officer

Case No. I.D. 1357/2008

Registered on 18.9.2008

The General Secretary, Punjab National Bank Workers' Organisation 388, Sector 12, Urban Estate, Panipat

... Petitioner

Versus

The Zonal Manager, Punjab National Bank, Zonal Office, Sector 17-B, Chandigarh

... Respondent

APPEARANCES

For the workman : Sh. Satish Chabbra, AR.

For the Management : Sh. Arvind Rajotia, Advocate

AWARD

Passed on December 14, 2012

Central Government vide Order No. L-12011/44/2007-IR(B-II) Dated 29-8-2007 read with Order dated 29-1-2008, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

> "Whether the action of the management of Punjab National Bank to deny the benefit of upgraded scale of Head - Cashier Category 'E' to Sh. Anil Mehta from 1-4-2002 whereas the same was extended by the bank to Sh. Ravi Grover who is junior to Sh. Anil Mehta is justified and legal? If not, to what relief the workman is entitled?"

As it appears from the memorandum of settlement dated 6-12-2001 a copy whereof has been filed by both the parties; the respondent-bank has several categories of branches and of the Head- Cashiers having different special pay for different categories of Head- Cashiers. The case of the claimant is that he was senior to one Sh. Ravi Grover on the post of Head-Cashier Category 'A'. He joined the category on 1-10-2001 while Ravi Grover joined that category w.e.f. 2-1-2002. In January 2002 the categories of Head Cashiers were revised and as per this revision, workman became Head Cashier Category 'C' w.e.f. 1-1-2002 while Ravi Grover became Head Cashier Category 'C' w.e.f. 2-1-2002 automatically but RO Hisar played a trick and letters of offer to both i.e. to the workman and to Ravi Grover were issued on 9-1-2002 for their upgradation in Category 'C'. Thereby presuming that both have been upgraded in Category 'C' w.e.f. 9-1-2002, whereas salary in new category was paid with retrospective effect from 1-1-2002 in case of workman and w.e.f. 2-1-2002 in case of Ravi Grover. Thus it was represented that both of them were approved on 9-1-2002 whereas this approval was automatic w.e.f. 1-1-2002 and 2-1-2002 respectively on account of re-categorization of the branches and conversion of Category 'A' to 'C' in all middle classes of branches. Workman and Ravi Grover both were working in middle class branches as Head Cashier Category 'A' w.e.f. 1-1-2002 and 2-1-2002 respectively. Thereafter RO Hisar offered the post of HC Category 'E' to workman on 27-3-2002 and also allowed to join at Branch Office Circular Road Sirsa on 1-4-2002. But in the afternoon on 1-4-2002 itself, the workman was reverted back in Category 'C' in his previous Branch and Ravi Grover was upgraded at Branch Office Circular Road Sirsa in Category 'E' w.e.f. 1-4-2002 by considering him senior to workman in Category 'C'. RO Hisar has misconceived, misplaced, misread and misrepresented the entire matter in order to extend undue favour to Ravi Grover.

The claim was contested by the bank and it was contended that the workman had been given the posting as Head Cashier Category 'E' vide letter dated 30-3-2002 inadvertently and on receiving clarification from the Head Office that the workman is not entitled to that posting, he was, again asked to work as Head Cashier Category 'C' vide order dated 1-4-2002 i.e. the day when he had joined his new posting in pursuance of letter dated 30-3-2002. It was not denied that the workman joined Category 'A' on 1-1-2002 while Ravi Grover on 2-1-2002. But it was said that

subsequently in terms of Settlement dated 6-12-2001 both were approved as Head Cashier Category 'C' on 9-1-2002 for their posting in the same branch i.e. Branch Office Circular Road Sirsa. As per the provisions of the settlement if two Head Cashiers designated as Head Cashier Category 'C' have the same date of posting as Head Cashier Category 'C' then the one in that event who is senior as on date of vacancy in terms of settlement dated 1-11-1988 will be treated as senior. Sh. Ravi Grover was senior to the workman as Clerk-cum-Cashier on 9-1-2002.He was offered the post of Category 'E'. This seniority is based upon their qualification and length of service. The qualification of the workman is only B.A whereas that of Ravi Grover is BA, CA 11B-I in terms of seniority list as on 1-1-2002.

In the written statement priority marks of both the employees had been given. According to which the total marks of workman are 21 while that of Ravi Grover are 22. It has been alleged that the postings had been done in accordance with the provisions of settlement dated 6-12-2001 read with settlement dated 1-11-1988. It was also pleaded that in terms of the provisions of settlement dated 6-12-2001 for filling up any given vacancy of Head Cashier Category 'A', 'C' and 'E' offer for permanent posting is to be made to the eligible employee; that means it is not automatic and there is no relevancy of posting of Category 'A'. It is only the posting and seniority of Head Cashier Category 'C' which is to be seen for the posting of Head Cashier Category 'E'. The bank denied that it extended any undue favour to anyone. According to it no injustice was done to the workman and action of the management of offering the post of Head Cashier Category 'E' to Ravi Grover is absolutely justified. According to the management the claim of the workman has no merits.

The workman filed a rejoinder to the written statement of the management and reiterated his claim in the claim statement.

In support of his case workman examined himself while on behalf of management Sanjeev Kumar Alawadhi was examined. Parties relied on certain papers also.

I heard the AR of the workman and perused the written arguments filed by the management. Following issues arises for consideration in this matter:—

1. Whether Ravi Grover is junior to the workman?
2. Whether the workman is entitled to the benefit of upgraded scale of Head Cashier Category 'E' w.e.f. 1-4-2002?

My findings on the aforesaid issues are as follows:

Issue No. 1

The workman claims that Ravi Grover is junior to him as Ravi Grover joined Category 'A' on 2-1-2002 while the workman had joined that category on 1-10-2001. Referring para 2.3 of Settlement dated 6-12-2001 he argued that the seniority of Head Cashier Category 'A' is to be determined from the "date of their posting as Head Cashier Category 'A'; and, therefore he was senior to Ravi Grover in Category 'A'.

The workman further claims that he became Head Cashier Category 'C' w.e.f. 1-1-2002 automatically while Ravi Grover became Head Cashier Category 'C' w.e.f. 2-1-2002, but Regional Office, Hisar issued the offer letter to both the candidates on 9-1-2002 to show that both have been upgraded in Category 'C' w.e.f. 9-1-2002. Management disputes that the workman or any other employee becomes entitled to Category C' automatically or the workman became entitled to that Category automatically on 1-1-2002 when new post of Category 'C' came into existence on account of Settlement dated 6-12-2001. According to the management para 3.2 and para 3.3 of the settlement dated 6-12-2001 clearly provides that for filling up any given vacancy of Head Cashier Category 'A', 'C' and 'E' the offer for permanent posting would be made to the eligible employee, that means it is not automatic.

I am in agreement with the management that the posting to any Category of Head Cashier is not automatic. Para 3 of the settlement provides for the procedure for offer and debarment. Para 3.1 provides that offer in terms of the settlement for permanent posting as Head Cashier of different categories will be made in writing to the concerned employee for unconditional acceptance within a period of three days from the date of offer. According to Para 3.2 the offer will be made to the three eligible Assistant Head Cashier/Clerk-cum-Cashier and if the offer is refused by all the three eligible candidates then the bank shall invite the application for filling up of such vacancy and would fill up the same from the senior-most eligible employee in term of the settlement on the basis of applications so received. Para 3.3 further provides that if the concerned employee fails to give unconditional acceptance, he will be treated to have refused the posting. It is therefore wrong to allege that the workman automatically became entitled to Category 'C' posting on 1-1-2002. Admittedly the workman and Ravi Grover both were approved as Head Cashier Category 'C' on 9-1-2002. Therefore the date of posting in that category cannot be earlier to 9-1-2002. The receiving of salary of Category 'C' from a date earlier to 9-1-2002 cannot be a factor to determine the seniority as per settlement. The management is therefore right in contending that the date of posting of both i.e. the workman and Ravi Grover is the same i.e. 9-1-2002. It is important to note that both have been approved as Head Cashier Category 'C' for their posting in the same branch i.e. Branch Office Circular Road, Sirsa.

Now it is admitted to both the parties that the seniority of the employees for the purpose of posting of Head Cashier is to be determined in accordance with the policy and procedure as laid down in the Settlement dated 1-11-1988. However none has mentioned the policy and

procedure provided in that settlement. But it is relevant that the management in Para 2 at page 3 of the written statement has stated that the seniority of Ravi Grover and the workman is based upon their qualification and length of service, and the qualification of the workman is only BA where that of Ravi Grover is BA, CAIIB-1, and in terms of seniority list as on 1-1-2002 the priority marks of the workman and Ravi Grover are 21 and 22 respectively. The workman filed a rejoinder to the bank's written statement but has not alleged that basing the seniority on the qualification and length of service is against the provisions of Settlement dated 1-11-1988 and Ravi Grover is not more qualified than himself and the priority marks of Ravi Grover and himself are not as shown by the bank in its written statement. In his affidavit also the workman did not say anything in this respect. The management witness Sanjeev Kumar Alawadhi in his affidavit has again reiterated these facts but these facts remained unchallenged during cross-examination . It is therefore clear that the stand taken by the management in is written statement is correct and seniority of the employees for the post of Head Cashier is to be determined on the basis of their qualification and length of service and Ravi Grover is more qualified and has more priority marks than the workman. It therefore cannot be accepted that Ravi Grover is junior to workman. Issue No.1 is decided against the workman .

Issue No.2

On the basis of the above going discussion I find sufficient force in the argument of the learned counsel for the management that for the posting of Head Cashier-Category 'E' there is no relevancy of posting of Category 'A'. It is only the posting of seniority of Head Cashier Category 'C' that is to be seen for the posting of Head Cashier Category 'E'. The bank therefore committed no error in making an offer to Ravi Grover for the post of Head Cashier Category 'E' w.e.f. 1-4-2002. Workman is not entitled to the benefit of that post w.e.f. 1-4-2002.

In his claim statement the workman has also raised the issue of offer of the post of Category 'E' to one Mr. S.K. Jindal. But there is nothing in this regard in his affidavit and therefore there is no evidence to support his case with regard to S.K. Jindal.

From the above going discussion it is thus clear that the management of Punjab National Bank is justified in denying the benefit of upgraded scale of Head Cashier Category 'E' to the workman from 1-4-2002. Workman is not entitled to any relief. The reference is answered against the workman.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 7 जनवरी, 2013

का.आ. 256.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जेट एयरवेज़ (इण्डिया) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, मुम्बई के पंचाट (आईडी संख्या सीजीआईटी-1/56 का 2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-2013 को प्राप्त हुआ था ।

[सं. एल-11012/65/2007-आई आर (सी-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 7th January, 2013.

S.O. 256.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No CGIT-1/56 of 2007) of the Central Government Industrial Tribunal No.1, Mumbai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Jet Airways (India) Limited, and their workman, which was received by the Central Government on 7-1-2013.

[No. L-11012/65/2007-IR (C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.1, MUMBAI

Present

JUSTICE G.S.SARRAF

Presiding Officer

Reference No. CGIT-1/56 of 2007

Parties: Employers in relation to the management of Jet Airways (India) Ltd.

And

Their workman (Vinod Patel)

Appearances :

For the Management : Smt. Pooja Kulkarni, Adv.

For the workman : Shri Shivdasani, Adv.

State : Maharashtra

Mumbai, dated the 23rd day of July, 2012

AWARD PART-I

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows:

> "Whether the action of the management of Jet Airways (India) Limited Mumbai in dismissing the services of Shri Vinod Patel, Loader w.e. f.15-12-2006 is justified and legal? If not, to what relief is the concerned workman entitled?"

According to the statement of claim the second party workman was in the employment of the first party as Loader-

cum-Cleaner. The first party appreciated his work by a certificate dated 24-9-2000. The workman was a member of Bharatiya Kamgar Sena. He along with other workmen resigned from Bhartiya Kamgar Sena and joined Bharatiya Kamgar Karmachari Mahasangh. Vide letter dated 30-12-2002 the first party suspended the workman alleging against him the use of abusive language while on duty on 29-12-2002. The allegations made against the workman were false and concocted. By letter dated 8-1-2003 the first party issued a charge sheet against the workman. The workman replied to the charge sheet by letter dated13-1-2003 denying the allegations. The company conducted an enquiry against the workman which commenced on 17-2-2003 and concluded on 19-4-2004. The enquiry against the workman was conducted without following the principles of natural justice and the findings of the Enquiry Officer are perverse on the grounds as mentioned in para No.3 of the statement of claim. The workman has prayed that he be reinstated with full back wages, continuity of service and all the consequential benefits w.e.f.15-12-2006.

According to the written statement filed by the first party, on 29-12-2002 a team of loaders consisting the workman finished the work on Flight 9 W 332 and, therefore, the supervisor asked them to perform duties on Flight 9W 480 at bay No. 01 which was getting landing clearance at that time, while the supervisor was taking the team to the bay the workman abused the supervisor using unparliamentary language. The supervisor at one time was a loader like the workman and he was promoted as supervisor on account of his honesty, integrity and devotion to duty as such the other loaders were biased against the supervisor. The supervisor lodged a complaint in writing to the management. The management issued charge sheet dated 8-1-2003 to the workman. The workman replied and denied charges levelled against him. A departmental enquiry was conducted. The workman and his defence representative fully participated in the enquiry. The Enquiry Officer found the workman guilty of the charges levelled against him and submitted his report accordingly. A copy of the said report and findings were furnished to the workman and the workman submitted his comments on the report. The Competent Authority imposed the punishment of dismissal. The workman is not entitled to any relief.

The workman has filed rejoinder wherein he has reiterated his stand and has denied that the supervisor Mathew Colaco was a member of the same union namely Bharatiya Kamgar Karmachari Mahasangh as the second party workman.

Following issues have been framed as per the ordersheets dated 24-2-2011 and 28-9-2011

(1) Is the departmental enquiry fair, proper and in accordance with principles of natural justice?

(1-A) Whether the findings of the Enquiry Officer are perverse?

(2) Whether the action of the management of Jet Airways (India) Ltd. Mumbai in dismissing the service of Shri Vinod Patel, loader w.e.f. 15-12-2006 is justified and legal? If not, to what relief is the concerned workman entitled?

(3) What order?

The second party workman has filed his affidavit and he has been cross-examined by learned counsel for the first party. The first party has not led any oral evidence.

Heard Shri Shivdasani, learned counsel for the second party workman and Smt.Pooja Kulkarni, learned counsel for the first party on Issues No.1 and 1-A.

ISSUE No. 1: The second party workman has participated in the enquiry. He has cross-examined the witnesses produced by the first party and has examined as many as four witnesses including himself in defence. It is thus clear that the second party workman was given full opportunity to defend himself.

In cross-examination the second party workman has stated:

> "This is correct that I did not make any complaint against the enquiry officer regarding his partiality and prejudice. This is correct that I did not make any request to the management for changing the Enquiry Officer. This is correct that I did not take any objection in writing with respect to the Presenting Officer of the management appearing in the enquiry without authority.

There is no evidence on the record to show any violation of principles of natural justice.

It is well-settled that principles of natural justice are not embodied rules. To sustain the allegation of violation of principles of natural justice one mustestablished that prejudice has been caused to him for non-observance of principles of natual justice. In this case no prejudice has been shown to have been caused to the workman.

I, therefore, find that the enquiry held against the second party workman is fair and proper.

Issue No.1 is decided against the second party workman.

ISSUE No.1-A

Following are the charges:

On 29th December 2002 you were rostered for shift commencing at 0500 hrs to 1300 hrs and were allocated in the L-5 group for handling the arrivals/departures of the following flights assigned to your group.

Flight No.	Arrival Time	Parked at Bay number	Flight No.	Departure time
9W-332	0845 hrs.	39	9W-475	1200 noon
9W-480	0905 hrs.	01	9W-347	1000 hrs.
(W-406	1015 hrs.	04	9W-406	1100 hrs.

After the loading of 9W-332 was completed you along with your group members were instructed by your Loader Supervisor, Mr.Mathew Colaco to attend the arrival of flight number 9W-480 (at assigned bay number 01) which was getting landing clearance at that time. When other members of your group boarded the jeep driven by Mr.Mathew Colaco to reach Bay No.1 you intervened in between and stopped all of them. You started starring angrily at Mr.Colaco and asked him as to why he was driving you all from one bay to other angrily at Mr.Colaco and asked him as to why he was driving you all from one bay to other bay.(tu kyo ham to idhar se udhar le ke jaa raha hai) Mr.Colaco replied you back saying why not? (Kyo nahi le ke jaane ka?) On this you gave a bad word to Mr.Colaco saying "Terry Maa ki Choot". At that time Mr.Colaco cautioned you not to use bad words and he should behave himself. On this suddenly you pounced on Mr.Colaco and started arguing with him by saying why he is getting work done with only seven loaders? (Tu Koun hai? Tum saat admiyon me kyo kaam karta hai? Tum team leader hai. Yeh flight per kaun supervisor hai? (Mr.Colaco replied to you saying that in the past several times they have worked with limited manpower (pahle bhi kam admiyon me kaam hota tha). With this reply of Mr.Colaco you become furious and told him that in the past you were getting salary for your work and now you are not getting your salary (Pahle ham kop agar milta tha) Mr.Colaco asked him whether he is not getting his salary now? (Abhi nahi milta tha) On this you again used bad word saying 'Teri Maa Chuddai na usne? Mr.Colaco was totally stunned and terribly frighteAed, by your shocking and opprobrious behaviour and could not utter a single word out of his mouth. He thereafter made a report of the incident in writing to his superiors.

The above act on your part amounts to misconduct as per the model standing orders applicable to you.

You are, therefore charged with the following charges:

"Drunkenness, riotous disorderly or indecent behaviour on the premises of the establishment"

and

"commission of any act subversive of discipline or good behaviour on the premises of the establishment"

In the enquiry the first party examined the complainant Mathew Colaco, supervisor and one Atul Joshi whereas in defence the workman examined himself and three other witnesses namely; V.S.Yadav, R.Ved and Sandeep Shelar.

Mathew Colaco deposed before the Enquiry Officer as under:

On 29th December 2002 I was performing my duties as Loader Supervisor in the morning shift. Since it was Sunday there was some shortage of manpower. Therefore I made group of 7 boys instead of 8 for loading unloading purposes. Mr.Vinod Patel was in L-5 group. We were total 3 supervisors (myself, Mr.Rajesh Kadu and Mr.Suresh Bane) were on duty that day.There were total 3 flights for arrival departure handling allocated to L-5 groups between 7.00 a.m. to 1.00 pm. Flight number 480/347 had arrived at 9.15 a.m.and was waiting for departure at 10.00 a.m. Second flight was 406/406 which was scheduled to arrive at 10.15 a.m. and was scheduled to depart at 11.00 a.m. Third flight (9W 332/ 475) had arrived at 08.45 a.m. and was scheduled to depart at 12.00 noon. Since the third flight had arrived first, it was required to handle the arrival of the said flight and move to first flight (9W-347) The said flight was arriving at Bay No.1 and the flight number 332 was parkedat Bay number 39.

When the flight number 480/347 arrived at 9.15 a.m. at Bay number 1, I received a call on radio transmitter to send L5 group to Bay number 1 from Bay number 39. I then reached by Jeep to bay number 39 to approach group L-5 and ask all of them to seat inside the Jeep to go to By number 01. This group was working on flight number 332 at Bay 39. I told all of them that their next flight had arrived on Bay number 1 including Mr.Patel who was also working on, bay number 39 along with L-5 group members. When the L-5 group Loaders were boarding the Jeep driven by me to go to next flight on Bay number 01,Mr.Patel stopped everybody. He then asked me "Why I was moving everybody from one bay to another bay? I replied him that since the next flight had already arrived, I was taking them to bay number 01 for the arrival handling of the said flight. I was instructed by the Ramp staff that Loaders should be ready at Bay at least 10 minutes prior to the commence of Arrival baggage off-loading.

I once again told everybody that your flight has arrived at Bay number 01 so they should seat in the Jeep to reach bay number 01. Mr.Patel then gave a bad word saying "Teri Maa ki Chut" My mother was seriously ill those days. I felt seriously dishearten and requestedMr.Patel not give me any bad words. I was driving the Jeep at that time and other group members from L5 group had already boarded the Jeep to go to Bay number 01. Mr.Patel was standing outside the Jeep and standing outside the window screen near Drivers seat where I was sitting. I then told him that your flight has already arrived and he should come inside the Jeep. He then questioned me as to why I was getting work done withless manpower. I replied him that it was "due to shortage of manpower"

He then questioned me saying "tum team leader hai, to yeh flight pe supervisor kaun hai? I told him that there were only 3 supervisors, and I was one among them. I also told him that normally we work with this much manpower by saying 'Pahle bhi cum admiyon me kam hota tha' Mr.Patel replied saying 'Pahle ham kop agar milta tha'. I then asked him "kya abhi pagar nahin milta kya" To this question he

suddenly replied that 'Teri maa chuddai na usne?" I again requested Mr.Patel not to give any bad words and told all the boys that whosoever wants to come with me to bay number 01 to handle the next flight arrival, should come along with me. I then moved to Bay number 01 along with other 4 boys to bay number 01.

I was under traumatic conditions because my mother was ill. The bad words given by Mr.Patel totally made me upset, I was totally shaken up by the behaviour of Mr.Patel, therefore made a report in writing to Mr.Atul Joshi, Duty Manager-Ramp Services requested action."

The workman has denied the whole occurrence and the three witnesses him have supported him.

The Enquiry Officer has discussed the entire evidence available on the record and has given the findings as under :

> It will be seen that the Management in support of the charges relied on the oral evidence of Mr. Mathew Colaco and Mr.Atul Joshi. Mr.Mathew in his statement totally narrated the details in which according to him Mr.Vinod Patel was involved and has committed offences. It is an admitted fact that on 29th December 2002 Mr.Vinod Patel was rostered for shift commencing from 500 hours to 1300 hours and the group supervisor was Mr.Mathew. The defence representative on behalf of Mr.Vinod Patel searchingly cross examined Mr.Mathew but the evidence of Mr.Mathew was consistent and the defence did not get any contradiction. In fact the evidence of Mr.Mathew was in the form of giving the total picture of the incident that took place between him and Mr.Vinod Patel on 29th December 2002. He also confirmed his written report submitted to the Management. In my opinion the evidence of Mr.Mathew was firm and consistent and had totally remained uncontradicted. The other witnessof the Management Mr.Atul Joshi gave details about the involvement of Mr.Vinod Patel in an incident with Mr.Mathew but in cross-examination by the defence representative, Mr.Atul Joshi has stated that whatever he has stated was told to him by Mr.Mathew. In my opinion such evidence has no evidential value and cannot be considered. As against this, the evidence of Mr.Vinod Patel and his two defence witnesses is in the form of only a plain denial of the allegations levelled against Mr.Vinod Patel. In fact the evidence of Mr.Vidya Sagar Yadav, Mr.R.Ved and Mr.Sandeep Shelar appears to be biased to Mr.Vinod Patel being the members of one common union and working in the same category of Loader-cum-Cleaner putting in the total number of service almost equal to each other. It is evident from the version of Mr.Vinod Patel and his 3 defence witnesses that it is a tutored evidence narrated at the enquiry to protect Mr.Vinod Patel. If Mr. Mathew was against the members of his group at the instigation of the Management, why did he give the complaint against Mr.Vinod Patel only and not other members of the group who according to Mr.Vinod Patel had also joined Bhartiya Kamgar Karmachari Mahasangh? I am not inclined to accept the defence evidence of Mr.Vinod Patel and his three defence witnesses and thus reject the same.
>
> As against this I have no hesitation in accepting the evidence of Mr.Mathew which has remained uncontradictory and is consistent and hold Mr. Vinod Patel guilty of his misbehaviour with his Supervisor while on duty on 29th December 2002 as mentioned in the charge sheet dated 8th January, 2003. Having found Mr.Vinod Patel guilty." the following charges stands proved conclusively against him.
>
> 1. Riotous, disorderly and indecent behaviour on the premises of the establishment.
> 2. Commission of an act subversive of discipline and good behaviour on the premises of the establishment.

It is well settled that an Enquiry Officer discharges quasi-judicial functions and he is obliged to record his reasons for the conclusion that he draws. On perusal of the enquiry report it is evident that the Enquiry Officer has discussed the evidence produced by the rival parties and has given reasons as to why the evidence produced by the first party has appealed to him in preference to the evidence produced by the second party workman.

It is not open to the Tribunal to re-appreciate the findings of the Enquiry Officer and on that basis arrive at a conclusion different from that of the Enquiry Officer. To put it in another way it is not within the scope of powers of the Tribunal to sit as appellate forum over the findings of the Enquiry Officer.

After going through the entire proceedings relating to the enquiry against the workman I do not think that the findings of the Enquiry Officer are perverse.

Issue No.1-A is decided against the workman.

The Reference be fixed for hearing on remaining Issues on 1-8-2012.

JUSTICE G. S. SARRAF, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

PRESENT

JUSTICE G.S.SARRAF, Presiding Officer

REFERENCE NO. CGIT-1/56 OF 2007

Parties : Employers in relation to the management of Jet Airways (India) Ltd.

And

Their workman (Vinod Patel)

Appearances :

For the Management : Shri Abhay Kulkarni, Adv.

For the workman : Shri Shivdasani, Adv.

State : Maharashtra

Mumbai, dated the 7th day of December, 2012.

AWARD PART-II

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 (hereinafter referred to as the Act). The terms of reference given in the schedule are as follows :

> Whether the action of the management of Jet Airways (India) Limited Mumbai in dismissing the services of Shri Vinod Patel, Loader w.e.f. 15-12-2006 is justified and legal? If not, to what relief is the concerned workman entitled?

It is not necessary to narrate the facts here because the facts have been stated in detail in the Award Part-I passed by this Tribunal on 23-7-2012.

Following are the Issues:—

(1) Is the departmental enquiry fair, proper and in accordance with principles of natural justice?

(1-A) Whether the findings of the Enquiry Officer are perverse?

(2) Whether the action of the management of Jet Airways (India) Ltd Mumbai in dismissing the service of Shri Vinod Patel, loader w.e.f. 15-12-2006 is justified and legal? If not, to what relief is the concerned workman entitled?

(3) What order

Issues Nos. 1 and 1-A have been decided against the workman. Heard rival submissions on the remaining Issues.

ISSUE NO.2: Shri Abhay Kulkarni, learned counsel for the management, has said that the second party workman was charged earlier also for similar misconduct vide charge-sheet dated 31-7-1999 (Ex.M-5) and he was punished with suspension for 4 days vide order dated 12-8-1999 (Ex.M-6). He has contended that in the Award dated 23-7-2012 passed by this Tribunal the enquiry has been held to be fair and proper and it has also been held that the findings of the Enquiry Officer are not perverse then this Tribunal should not interfere with the quantum of punishment particularly when the second party workman has been found to be guilty of the same type of misconduct for the second time. He has placed reliance on 2005 II CLR 849 and 2002 (94) FLR 521.

Shri Shivdasani, learned counsel for the workman has admitted that it is a second misconduct on the part of the second party workman but according to him it does not mean that the workman has habitually misbehaved or that he has been found guilty of the same misconduct repeatedly. He has said that the second party workman must be punished looking to the misconduct committed by him but the punishment given in this case is too severe and shockingly disproportionate to the charge proved against him. He has submitted that the second party workman has remained out of job for around six years and this punishment should be considered to be sufficient. He has placed reliance on (1984) 2 SCC 569 and (1982) 3 SCC 346.

This is correct that the second party workman has used improper, abusive and filthy language and this has occurred for the second time. The question is what ought to be the proper punishment in this case.

Section 11-A of the Act runs as under:

> 11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:
>
> Provided that in any proceedings under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]

While the jurisdiction of the Tribunal under Section 11-A of the Act is wide it is also equally true that its interference cannot be arbitrary. The language of Section 11-A makes it clear that for exercising the power to interfere with punishment the Tribunal has to be satisfied that the order of dismissal was not justified.

Following the principles laid down in 1984 2 SCC 59 and 1982 3 SCC 346. I am of the opinion that the punishment awarded to the second party workman is not justified as it is too severe and disproportionate to the charge proved against him.

The second party workman has remained out of job for about six years. I am of the opinion that the above punishement is sufficient in the facts and circumstances of the case.

A such the second party workman is entitled for reinstatement without back wages.

The Issue is decided as above.

ORDER

Jet Airways is directed to reinstate the second party workman Vinod Patel within a period of 2 months

Award Part-II is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 7 जनवरी, 2013

का.आ. 257.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नयूकलीयर पावर कोर्पोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 18/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-2013 को प्राप्त हुआ था ।

[सं. एल-22015/10/2006-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 7th January, 2013

S.O. 257.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/06) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Mumbai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Nuclear Power Corporation and their workman, which was received by the Central Government on 7-1-2013.

[No. L-22015/10/2006-IR (C-II)]
B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.1 MUMBAI

JSTICE G.S. SARRAF, Presiding Officer

REFERENCE NO. CGIT-1/18 OF 2006

Parties : Employers in relation to the management of Nuclear Power Corporation of India.

And

Their Workman (Saroj N.Patil)

Appearances :

For the first party	:	Mr. Vijay Kantharia, Adv.
For the workman	:	Ms. Kunda Samant. Adv.
State	:	Maharashtra

Mumbai, dated the 5th day of December 2012.

AWARD

1. In exercise of powers conferred by clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 (hereinafter referred to as the Act) the Central Government has referred the following dispute for adjudication to this Tribunal.

> Whether the action of the management of Nuclear Power Corporation of India Ltd. of not re-instating Mrs.Saroj N.Patil after acceptance of the Resignation tendered by her is legal and justified ? If not, to what relief the workman is entitled to?

2. According to the statement of claim the second party workman Saroj N.Patil was in the employment of the first party at its Power Station situated at Tarapur known as Tarapur Atomic Power Station since 20-8-1987 in ACCS School No.1 as Lower Division Clerk. She was appointed on compassionate grounds as her father expired in the course of his employment. Subsequently she was appointed - as a Lower Division Clerk on 9-11-1990 at TAPS Stores and she was on probation for one year. Her service record was clean and unblemished She successfully completed the probation period of one year. She reached the position of SRA-1 after passing requisite written and oral tests. According to the statement of claim the second party workman was mentally disturbed in or around third week of March 2003 due to difference of opinion between her and her husband in regard to her widowed mother and younger brother. She consulted Dr.Dilip Joshi a consultant psychiatrist for anxiety and depression. She was under his treatment from 1-4-2003. She learnt about gossip in her office that she eloped with a bachelor colleague at Pune. This added to her anxiety and depression resulting into mental sickness. She did not attend office from 25-4-2003. The first party sent to her telegrams for her absence from 25-4-2003. The first party sent to her telegrams for her absence from 25-4-2003 and thereafter started disciplinary action against her by issuing a chargesheet dated 20-5-2003 with the allegation of unauthorized absence. During these unfortunate days of mental imbalance she sent a letter of resignation dated 26-6-2003 through her colleague which the first party accepted on 27-6-2003. She did not resign voluntarily and she tendered the resignation letter under mental stress and sickness. She received her legal dues under the same mental condition. The first party abandoned the enquiry proceedings and hastily accepted her resignation in gross violation of the Industrial Employment (Standing Orders) Central Rules 1946 (hereinafter referred to as the Rules). On 8-11.2003 she obtained the fitness certificate and approached the first party and requested to allow her to withdraw her resignation but her request was ignored. She was constrained to raise an industrial dispute. However, the Labour Commissioner declined to intervene. She then filed a writ petition being

W.P. No. 8998/04 before the Bombay High Court and the High Court was pleased to pass an order directing the Central Government to make a reference under Section 10 of the Act. Hence this reference. The second party workman has, therefore, prayed that the first party be directed to allow the second party workman to withdraw her letter of resignation and she be reinstated with full back wages and continuity of service.

3. The first party has filed written statement wherein it has raised preliminary objections and has stated that the second party workman has accepted all the dues from the first party and as such she is estopped from making any grievances and further that there is no employer-employee relationship and as such no industrial dispute exists between the two. According to the written statement the first party workman was appointed as a Lower Division Clerk on compassionate grounds on 20-9-1990 vide appointment letter dated 14-9-1990 intimating the terms and conditions of the employment which were accepted by the second party workman by her letter dated17-9-1990. She was then promoted to the grade of JPA on 1-11-1995 and further promoted to the grade of SRA-1(contracts) w.e.f. 1-4-2001 under NPCIL (Upgradation) Scheme. The second party workman was not attending her duties w.e.f. 26-4-2003 and she did not send any information or application for leave. A telegram dated 29-4-2003 was sent to her advising her to join duty immediately. The second party workman did not join her duties and did not send any reply either. A chargesheet dated 20-5-2003 was issued to the second party workman for unauthorisedly remaining absent from duties. The second party workman did not submit any reply to the said chargesheet. During the pendency of the said enquiry the second party workman tendered her resignation vide her letter dated 26-6-2003 with a request to accept her resignation w.e.f. 27-6-2003. She also requested vide the said letter that her dues be deposited in her bank account. Since the second party workman tendered her resignation on her own, therefore, the Competent Authority decided to drop the action initiated against her and after taking a sympathetic view also decided to waive the notice period. The second party workman accepted her dues such as Provident Fund, Gratuity etc., which were paid to her on 6-8-2003. Her Group Insurance was also paid to her sometime in October 2003. The first party then received a representation dated 8-11-2003 from the second party workman wherein she made a request for her reinstatement after a lapse of more than 4 months from the date of acceptance of her resignation and payment of her dues. The first party did not accede to her request as per rules. According to the written statement the second party workman is not entitled to any relief.

4. The second party workman has filed an affidavit and an additional affidavit and she has been cross examined by learned counsel for the first party. She has also filed affidavit of her husband Nitin Haribhau Patil who has been cross-examined by learned counsel for the first party. She has also examined Dr. Dilip Joshi and Dr. Ratnakar Kulkarni. The first party has filed affidavit of its Senior Manager Suresh Suvarna and he has been cross-examined by learned counsel for the second party workman.

5. Heard Ms. Kunda Samant, learned counsel on behalf of the second party workman and Mr. Vijai Kantharia on behalf of the first party.

6. Ms. Kunda Samant has contended that the resignation of the second party workman is a nullity without one month notice as per Rule 13 of the Rules. She has argued that the first party could not act upon the alleged resignation letter as it was involuntary because the second party workman was under great mental stress and depression at the relevant time.

7. Rule 13 of the Rules requires one month's notice by the employer in case of termination of service of the employee. Here the services of the second party workman have not been terminated by the first party but it is the second party workman who resigned and, therefore, no notice was required to be given by the first party under Rule 13 of the Rules. It is thus clear that the argument of learned counsel for the second party workman is without any force.

8. The undisputed facts are that the second party workman resigned from service by letter dated 26-6-2003 (Ex. M-10) wherein it was requested to accept the resignation letter with effect from 27-6-2003. The first party workman Saroj N.Patil admits in her cross-examination:

> Ex. M-10 is my resignation letter. It is in my hand writing and bears my signature"

The first party by order dated 27-6-2003 (Ex.M-11) accepted the letter of resignation of the second party workman w.e.f. 27-6-2003 as requested by her in her resignation letter dated 26-6-2003 (Ex.M-10). The second party workman then after a lapse of more than 4 months, filed an application dated 8-11-2003 (Ex. M-16) for withdrawal of her resignation letter and for reinstatement. An employee is entitled to withdraw his resignation before its acceptance. Once his resignation is accepted there is no jural relationship between the employee and. employer and the employee cannot withdraw the resignation nor can claim reinstatement in the absence of any law or rule to the contrary governing the conditions of service of the employee. Learned counsel for the second party workman has not shown any service rule providing for withdrawal of resignation after its acceptance.

9. It is noteworthy that as per the resignation letter Ex. M-10 it has been tendered due to family and personal problem of the second party workman. It is not stated there that the second parry workman was suffering from any mental anxiety or depression. She submitted withdrawal letter after more than 4 months. In the letter withdrawing her resignation (Ex. M-16) the second party workman has

stated that she resigned in haste and on the spur of moment feeling frustrated and there is no mention of any mental anxiety or depression or that she was treated by the psychiatrist Dr. Dilip Joshi. It is thus clear that the story developed by the second party workman regarding her mental anxiety and depression and regarding her treatment by Dr. Dilip Joshi is entirely an afterthought and it is not at all trustworthy.

10. There is nothing on the record to prove that the resignation letter dated 26-6-2003 (Ex.M-10) was not voluntary. I am clearly of the opinion that the resignation letter dated 26-6-2003 (Ex. M-10) was submitted voluntarily. Therefore, the argument of learned counsel for the second party workman that the above letter was not voluntary is not acceptable.

11. Moreover, it is a case where the workman has resigned and she has admitted in her cross examination that the first party paid to her all legal dues. Persons who have been dismissed/discharged or retrenched in connection with an industrial dispute or whose dismissal/ discharge or retrenchment has led to the dispute have been included in the definition of workman but a person who has resigned from service and who has been paid all emoluments as applicable to her cannot be treated to be a workman under Section 2(s) of the Act. Therefore, the second party workman is not a workman within the definition of workman under Section 2(s) of the Act and she is not entitled to raise this controversy before this Tribunal.

12. For the reasons stated above the second party workman is not entitled to any relief.

Award is passed accordingly.

Justice G. S. SARRAF, Presiding Officer

नई दिल्ली, 7 जनवरी, 2013

का.आ. 258.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 40/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/347/2002-आई आर (सी एम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 7th January, 2013

S.O. 258. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/06) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Murpar Project of (Umrer Area) of WCL, WCL Contractor, Singhnagar, Dahegaon, and their workmen, received by the Central Government on 7-1-2013.

[No. L-22012/347/2002-IR (CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER CGIT-CUM- LABOUR COURT, NAGPUR

Case No. CGIT/NGP/40/2006 Date: 21-12-2012.

Party No. 1 (a): The Sub Area Manager, WCL
Murpar Project of (Umrer Area) of WCL,
Post: Khadsanghi, Tah-Chimur,
Distt. Chandrapur (MS)

(b) M/s. Singh & Sons,
WCL Contractor, Singhnagar, Dahegaon,
Chhindwara Road, Distt. Nagpur (MS)

Versus

Party No. 2 : Shri Raju S/o Bajirao Bharade,
aged about 33 years,
R/o Murpar, Post: Khadsangi,
Teh.-Chimur, Distt. Chandrapur
Maharashtra.

AWARD

(Dated: 21st December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Raju S/o Bajirao Bharade, for adjudication, as per letter No. L-22012/ 347/2002-IR (CM-II) dated 21-03-2006, with the following schedule :—

"Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Raju S/o Bajirao Bharade is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written

statement and accordingly, the workman Shri Raju Bajirao Bharade, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of party No. 1 (a) i.e. Sub-Area Manager, Murpar Project and party No. 1 (a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road upto the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the party No. 1 (a) also engaged party No. 1 (b), M/s. Singh & Sons in its work w.e.f. 05-01-1997 and till party No.1 (b) is working with party No. 1 (a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by M/s. Bharat Gold Mines Limited, Kolar Gold Fields, Karnataka State ("B.G.M.L" in short) as a General Mazdoor on 12-07-1993 and he continued to work till 02-07-1996 and thereafter, his services were utilized by party No. 1 (b) w.e.f. 20-01-1997 continuously till 28-12-2001 and party No. 1 (a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman employee of party No. 1 (a) and party No. 1 (a) is the principal employer and his appointment by both the contractors was oral and the party No. 1 (b) terminated his services orally w.e.f. 29-12-2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of Section 25- F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties No.1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties No.1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of Section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties No. 1(a) and 1(b), but they did not re-employ him in violation of Section 25 H of the Act. It is further pleaded by the workman that he along with other workers had submitted charter of various demand to the parties No.1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as party No.1 was the principal employer and party No.1(b) was the contractor of party No.1 (a), for each and every act of the party No.1 (b), the party No.1 (a) was responsible and as such, the party No.1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party No.1 (a) resisted the claim by filing its written statement. It is necessary to mention here that in spite of notice, party No. 1 (b) neither appeared on the case nor contested the claim.

In its written statement, the party No. 1 (a) has pleaded inter-alia that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3½ months and the incline shaft drivage within eight months and it also awarded another contract to party No. 1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to' seam V at Murpar project of which the date of commencement and completion were 01-01-1997 and 28-02-1998 respectively and after a gap of 15 months, another contract was given to party No. 1 (b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29-05-1999 and 1-12-2001 respectively and it party No. 1 (a) was related to' party No.1 (b) only as per the terms of contract and it was not at all responsible far providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the party No. 1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cast of the training is borne by the contractor concerned and the engagement of the lobaurers was the jab of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by party No.1(b) for contract works at Murpar Project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi, Union Public Service Commission Vs. Girish Jayanti [2006 (2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of party No. 1 (a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to party No. 1 (b), as they were of having different

legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of Section 25-F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. The workman besides placing reliance on documentary evidence, filed his own evidence on affidavit in support of his claim. It is necessary to mention here that as nobody appeared on behalf of the party No. 1(a) to cross-examine the workman, on 15-11-2011, "no cross" order was passed.

It will not be out of place to mention here that on 30-01-2012, an application for grant of permission to cross-examine the workman and setting aside the ex parte order, another application for dismissal of the reference on the basis of the judgment of the Hon 'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi, AIR 2006 SC 1806, and a pursis stating that the Tribunal has not framed the preliminary issue regarding the maintainability of the proceeding and that the proceeding is not maintainable as there existed no employer-employee relationship between WCL were filed by the learned advocate for the party No. 1. However, the said applications and pursis were rejected as not pressed as neither the advocate nor anybody else on behalf of party No. 1 appeared to move the same.

5. At the time of argument, it was submitted by the learned advocate for the workman that party No. 1 (a) had engaged M/s. B.G.M.L, a registered company and a Government of India Enterprises for preparation of underground roads upto the boarder of coal in Murpar Coal Mine and the said contract was from the year 1992 to 1996 and the said company had appointed the workman from 12-07- 1993 to 02-07-1996 as a General Mazdoor and the workman was again appointed by party No.1 (b) from 20-01-1997 to 28-12-2001 and the workman was sent for vocational training by party No. 1 (a) and as such, the workman was the employee of party No. 1 and party No. 1(a) is the principal employer and the appointment of the workman by both the contractors was oral appointment and the services of the workman were terminated by party No. 1 (b) w.e.f. 29-12-2001 and the workman had worked for more than 240 days with the party No.1 (b),preceding his termination and before the termination of the services of the workman, mandatory provisions of Section 25- F of the Act were not complied with and neither one month's notice, nor one month's pay in lieu of the notice, nor retrenchment compensation was given to the workman and as such, the termination of the workman is illegal and such termination amounts to retrenchment and party No.1(a) and 1 (b) did not prepare and publish the seniority list as required under Rule 77 of Industrial Disputes (Central) Rules, 1957, even though more than 700 workers were working with them in various category and as such, there was violation of the provisions of Section.25-G of the Act and therefore, the workman is entitled to reinstatement in service with continuity and full back wages.

6. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. So, in this case, even if the case proceeded ex parte against parties No. 1 (a) and 1 (b) still then, the workman is to discharge the burden by adducing evidence to show that legally he is entitled for the reliefs claimed by him.

7. In this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar Colliery by party No.1 (a) and BGML engaged him from 12-07-1993 to 02-07-1996 as a General Mazdoor and that he was again engaged by party No.1(b), another contractor from 20-01-1997 to 28-12-2001. It is never the case of the workman that he was engaged or appointed by party No. 1 (a). The only claim of the workman is that party No. 1 (a) had sent him for vocational training and he had under gone the training successfully. In support of such claim, the workman has filed the Xerox copy of the certificate granted in his favour for undergoing the vocational training from 02-09 -1993 to 29-09-1993. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of party No.1(a), as because, he was sent for vocational training by party No. 1 (a).

8. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct , relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct

relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the party No. 1 (a) and he was employed by the contractors and the party No. 1 (a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

9. So far the termination of the services of the workman by the party No. 1 (b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex Court, in the decision reported in AIR 1966. SC-75 (Employees, Digawadih Colliery Vs. Their Workmen) have held that:—

"Though Section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into Section 25 B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended Section 25- B only consolidates the provisions of Section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of Section 25-F of the Principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended Section 25 B and the unamended Cl. (b) of Section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness' which existed in the unamended Section 25- B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14.of 1947). Section 25- B (1) and (2)- Continuous service-Scope of sub-Sections (1) and (2) is different, (words and phrases Continuous Service). Before a workman can complain of retrenchment being not in consonance with Section 25- F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that Section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of Section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) has held that: .

"Industrial Disputes Act (14 of 1947) S.25-F, 10-Retrenchment compensation -Termination of services without payment of -Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination- Claim denied by management-Onus lies upon workman to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

10. So, it is clear from the principles enunciated by the Hon 'ble Apex Court in the decisions mentioned above that for applicability of Section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

11. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infect worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29-12-2001. So, it is necessary to prove that in the preceding twelve calendar months of 29-12-2001, the workman had worked for 240 days.

13. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29-12-2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in Section 25-F read with Section 25-B of the Act, the provisions of Section 25- F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 7 जनवरी, 2013

का.आ. 259.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 41/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/348/2002-आई आर (सीएम-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 7th January, 2013

S.O. 259.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Murpar Project of (Umrer Area) of WCL, WCL Contractor, Singhnagar, Dahegaon, and their workmen, received by the Central Government on 7-1-2013.

[No. L-22012/348/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/41/2006

Date: 21-12-2012

Party No. 1(a) : The Sub Area Manager, WCL Murpar Project of (Umrer Area) of WCL, Post: Khadsanghi, Tah -Chimur, Distt. Chandrapur (MS)

(b) M/s. Singh & Sons, WCL Contractor, Singhnagar, Dahegaon, Chhindwara Road, Distt. Nagpur(MS)

Versus

Party No. 2 : Shri Kalidas, S/o Daulat Dohtare, aged about 32 years, R/o. Murpar, Post: Khadsangi, Teh.-Chimur, Distt. Chandrapur Maharashtra.

AWARD

(Dated: 21st December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Kalidas S/o Daulat Dohtare, for adjudication, as per letter No. L-22012/348/2002-IR (CM-II) dated 21-03-2006, with the following schedule :—

> "Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Kalidas, S/o Daulat Dohtare is legal and justified ? If not, to what relief he is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman Shri Kalidas Daulat Dohtare, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of party no.1 -.(a) i.e. Sub-Area Manager, Murpar Project and party no. 1(a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground road upto the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the party no. 1 (a) also engaged party no.1 (b). M/ s. Singh & Sons in its work w.e.f. 05-01-1997 and till party no.1 (b) is working with party no.1 (a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by M/s. Bharat Gold Mines Limited, Kolar Gold Fields, Karnatak State ("B.G.M.L" in short) as a General Mazdoor on 24-10-1993 and he continued to work till 02-07-1996 and thereafter, his services were utilized by party no.1 (b) w.e.f. 20-1-1997 continuously till 28-12-2001 and party no. 1 (a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/ employee of party no. 1 (a) and party no. 1 (a) is the principal employer and his appointment by both the contractors was oral and the party no. 1 (b) terminated his services orally w.e.f. 29-12-2001and he had worked for more than 240 days preceding to his termination and which terminating his services, mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no.1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no.1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial

Disputes (Central) Rules, 1957 and there was no compliance of Section 25-G of the Act and the termination of his servides amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of Section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the parties no.1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December, 2001 was not paid to him and as party no.1 was the principal employer and party no.1 (b) was the contractor of party no.1 (a), for each and every act of the party no. 1 (b), the party no. 1 (a) was responsible and as such, the party no.1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party no.1 (a) resisted the claim by filing its written statement. It is necessary to mention here that in spite of notice, party no.1 (b) neither appeared in the case nor contested the claim.

In its written statement, the party No. 1 (a) has pleaded inter-alia that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3½ months and the incline shaft drivage within eight months and it also awarded another contract to party no.1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 1-01-1997 and 28-02-1998 respectively and after a gap of 15 months, another contract was given to party no.1 (b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29-05-1999 and 1-12-2001 respectively and it (party no.1(a)) was related to party no.1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the party no.1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by party no. 1 (b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi, Union Public Service Commission Vs. Girish Jayanti [2006 (2) SCALE 115)] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of party no.1(a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to party no. 1 (b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of Section 25- F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. The workman besides placing reliance on documentary evidence, filed his own evidence on affidavit in support of his claim. It is necessary to mention here that as nobody appeared on behalf of the party no.1 (a) to cross-examine the workman, on 15-11-2011, "no cross" order was passed.

It will not be out of place to mention here that on 30-01-2012, an application for grant of permisson to cross-examine the workman and setting aside the "exparte order, another application for dismissal of the reference on the basis of the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi, AIR 2006 SC 1806, and a pursis stating that the Tribunal has not framed the preliminary issue regarding the maintainability of the proceeding and that the proceeding is not maintainable as there existed no employer-employee relationship between WCL were filed by the learned advocate for the party No. 1. However, the said applications and pursis were rejected as not pressed as neither the advocate nor anybody else on behalf of party no.1 appeared to move the same.

5. At the time of argument, it was submitted by the learned advocate for the workman that party no.1 (a) had engaged M/s. B.G.M.L, a registered company and a Government of India Enterprises for preparation of underground roads upto the boarder of coal in Murpar Coal Mine and the said contract was from the year 1992 to 1996 and the said company had appointed the workman from 24-10-1993 to 2-07-1996 as a General Mazdoor and the workman was again appointed by party no.1 (b) from

20-01-1997 to 28-12-2001 and the workman was sent for vocational training by party no.1 (a) and as such, the workman was the employee of party no.1 and party no. 1(a) is the principal employer and the appointment of the workman by both the contractors was oral appointment and the services of the workman were terminated by party no.1(b) w.e.f. 29-12-2001 and the workman had worked for more than 240 days with the party no.1(b) preceding his termination and before the termination of the services of the workman, mandatory provisions of Section 25- F of the Act were not complied with and neither one month's notice, nor one month's pay in lieu of the notice, nor retrenchment compensation was given to the workman and as such, the termination of the workman is illegal and such termination amounts to retrenchment and party no. 1 (a) and 1 (b) did not prepare and publish the seniority list as required under Rule 77 of Industrial Disputes (Central) Rules, 1957, even though more than 700 workers were working with them in various category and as such, there was violation of the provisions of Section 25-G of the Act and therefore, the workman is entitled to reinstatement in service with continuity and full back wages.

6. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. So, in this case, even if the case proceeded exparte against parties no.1 (a) and 1 (b) still then, the workman is to discharge the burden by adducing evidence to show that legally he is entitled for the reliefs claimed by him.

7. In this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar colliery by party no.1 (a) and BGML engaged him from 24-10-1993 to 2-07-1996 as a General Mazdoor and that he was again engaged by party no.1(b), another contractor from 20-01-1997 to 28-12-2001. It is never the case of the workman that he was engaged or appointed by party no.1 (a). The only claim of the workman is that party no. 1 (a) had sent him for vocational training and he had under gone the training successfully. In support of such claim, the workman has not filed any document. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of party no. 1(a), as because, he was sent for vocational training by party no. 1 (a).

8. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the party no. 1 (a) and he was employed by the contractors and the party no.1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

9. So far the termination of the services of the workman by the party no. 1 (b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before. embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that:—

> "Though Section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into Section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended Section 25-B only consolidates the provisions of Section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of Section 25-F of the principal Act by substituting in cause (b) the

words "for every completed year of continuous service" has removed a discordance between the unamended Section 25 B and the unamended Cl. (b) of Section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended Section 25- B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25- B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that Section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of Section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) has held that :

"Industrial Disputes Act (14 of 1947- S. 25-F, 10—Retrenchment compensation-Termination of services without payment of —Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination- Claim denied by management-Onus lies upon workman to show that he had' in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

10. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of Section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

11. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon 'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29-12-2001. So, it is necessary to prove that in the preceding twelve calendar months of 29-12-2001, the workman had worked for 240 days.

13. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29-12-2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in Section 25-F read with Section 25-B of the Act, the provisions of Section 25- F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 7 जनवरी, 2013

का.आ. 260.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (आईडी संख्या 42/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-2013 को प्राप्त हुआ था ।

[सं. एल-22012/349/2002-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 7th January, 2013

S.O. 260.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Murpar Project of (Umrer Area) of WCL, WCL Contractor, Singhnagar, Dahegaon, and their workmen, received by the Central Government on 7-1-2013.

[No. L-22012/349/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/42/2006

Date: 21-12-2012.

Party No. l(a) : The Sub Area Manager, WCL Murpar Project of (Umrer Area) of WCL, Post: Khadsanghi, Tah -Chimur, Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons, WCL Contractor, Singhnagar, Dahegaon, Chhindwara Road, Distt. Nagpur(MS)

Versus

Party No.2 : Shri Ramesh,S/o Pandurang Shrirame, aged about 35 years, R/o.Bhansuli, Post: Khadsangi, Teh.-Chimur, Distt. Chandrapur Maharashtra.

AWARD

(Dated : 21st December, 2012)

In exercise of the powers conferred by clause (d) of sub-Section (1) and sub-Section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Ramesh, S/o Pandurang Shrirame, for adjudication, as per letter No. L-22012/349/2002-IR (CM-II) dated 21-03-2006, with the following schedule:—

> "Whether the action of the management of WCL and M/s. Singh & Sons Contractor of WCL in terminating the services of Shri Ramesh, S/o Pandurang Shrirame is legal and justified ?" If not, to what relief he is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman Shri Ramesh Pandurang Shrirame, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at Murpar, which is known as "W.C. Ltd. Murpar Project" and the same is under the control and supervision of party no. 1 (a) i.e. Sub-Area Manager, Murpar Project and party no. 1 (a) engaged M/s. Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L" in short) for the purpose of preparing underground road upto the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the party no.1(a) also engaged party no. 1 (b). M/s. Singh & Sons in its work w.e.f. 05-01-1997 and till party no. 1 (b) is working with party no. 1 (a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by M/s. Bharat Gold Mines Limited, Kolar Gold Fields, Karnatak State ("B.G .M.L" in short) as a General Mazdoor on 11-05-1993 and he continued to work till 2-07-1996 and thereafter, his services were utilized by party no. 1 (b) w.e.f. 20-01-1997 continuously till 28-12-2001 and party no.1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/employee of party no.1 (a) and party no.1(a) is the principal employer and his appointment by both the contractors was oral and the party no. 1 (b) terminated his services orally w.e.f. 29-12-2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of potice, nor retrenchment compensation was paid to him by parties no.1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no.1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no' compliance or Section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. 1(a) and 1(b), but they did not re-employ him in violation of Section 25-H of the Act. It is further pleaded by the workman that he alongwith other workers had submitted charter of various demand to the parties no.1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as party no.1 was the principal employer and party no.1(b) was the contractor of party no.1 (a), for each and every act of the party no.1 (b), the party no. 1 (a) was responsible and as such, the party no. 1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party no.1 (a) resisted the claim by filing its written statement. It is necessary to mention here that in spite of notice, party no. 1 (b) neither appeared in the case nor contested the claim.

In its written statement, the party No. 1 (a) has pleaded inter-alia that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open

excavation work was to be completed within a period of 3½ months and the incline shaft drivage within eight months and it also awarded another contract to party no. 1 (b) for construction of drivage of a pair of incline shaft through sedimentary rocks like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01-01-1997 and 28-02-1998 respectively and after a gap of 15 months, another contract was given to party no.1 (b) for construction of drivage of incline shaft at Murpar project and the dates of commencement and completion of the said contract were 29-05-1999 and 01-12-2001 respectively and it party no. 1 (a) was related to party no. 1 (b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the party no. 1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by party no.1(b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi, Union Public Service Commission Vs. Girish Jayanti [2006 (2) SCALE 115] and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of party no. 1 (a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus between the contract given to B.G.M.L. and the contract given to party no. 1 (b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of Section 25- F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. The workman besides placing reliance on documentary evidence, filed his own evidence on affidavit in support of his claim. It is necessary to mention here that as nobody appeared on behalf of the party no. 1 (a) to cross-examme the workman, on 15-11-2011, "no cross" order was passed.

It will not be out of place to mention here that on 30-01-2012, an application for grant of permission to cross-examine the workman and setting aside the exparte order, another application for dismissal of the reference on the basis of the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi, AIR 2006 SC 1806, and a pursis stating that the Tribunal has not framed the preliminary issue regarding the maintainability of the proceeding and that the proceeding is not maintainable as there existed no employer-employee relationship between WCL were filed by the learned advocate for the party No. 1. However, the said applications and pursis were rejected as not pressed as neither the advocate nor anybody else on behalf of party no. 1 appeared to move the same.

5. At the time of argument, it was submitted by the learned advocate for the workman that party no. 1 (a) had engaged M/s. B.G.M.L, a registered company and a Government of India Enterprises for preparation of underground roads up to the boarder of coal in Murpar Coal Mine and the said contract was from the year 1992 to 1996 and the said company had appointed the workman from 11-05-1993 to 02-07-1996 as a General Mazdoor and the workman was again appointed by party no. 1 (b) from 20-01-1997 to 28-12-2001 and the workman was sent for vocational training by party no. 1 (a) and as such, the workman was the employee of party no. 1 and party no. 1(a) is the principal employer and the appointment of the workman by both the contractors was oral appointment and the services of the workman were terminated by party no.1 (b) w.e.f. 29-12-2001 and the workman had worked for more than 240 days with the party no.1(b), preceding his termination and before the termination of the services of the workman, mandatory provisions of Section 25- F of the Act were not complied with and neither one month's, notice, nor one month's pay in lieu of the notice, nor retrenchment compensation was given to the workman and as such, the termination of the workman is illegal and such termination amounts to retrenchment and party no. 1(a) and 1 (b) did not prepare and publish the seniority list as required under Rule 77 of Industrial Disputes (Central) Rules, 1957, even though more than 700 workers were working with them in various category and as such, there was violation of the provisions of Section 25-G of the Act and therefore, the workman is entitled to reinstatement in service with continuity and full back wages.

6. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. So, in this case, even if the case proceeded exparte against parties no. 1 (a) and 1 (b) still then, the workman is to discharge the burden by adducing evidence to show that legally he is entitled for the reliefs claimed by him.

7. In this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar colliery by party no. 1 (a) and BGM engaged him from 11-05-1993 to 02-07-1996 as a General Mazdoor and that he was again engaged by party no.l(b), another contractor from 20-01-1997 to 28-12-2001. It is never the case of the workman that he was engaged or appointed by party no. 1 (a). The only claim of the workman is that party no.1 (a) had sent him for vocational training and he had under gone the training successfully. In support of such claim, the workman has filed the Xerox copy of the certificate granted in his favour for undergoing the vocational training from 02-09-1993 to 29-09-1993. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of party no.1(a), as because, he was sent for vocational training by party no.1(a).

8. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation, and Abolition) Act, 1970 do not contemplate creation o direct relationship of master and servant between the princial employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the party no. 1 (a) and he was employed by the contractors and the party no.1(a) was not controlling or supervising the work of the workman. It is the definite stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be ralised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

9. So far the termination of the services of the workman by the party no.1 (b) is concerned, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that :—

> "Though Section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into Section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended Section 25-B only consolidates the provisons of Section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of Section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended Section 25-B and the unamended Cl. (b) of Section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended Section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

> "Industrial Disputes Act (14 of 1947). Section 25- B (1) and (2)- Continuous service-Scope of sub-Sections (1) and (2) is different, (words and phrases-Continuous Service).
>
> Before a workman can complain of retrenchment being not in consonance with Section 25- F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25- B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that Section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12

calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of Section 25-B and chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) has held that:

> "Industrial Disputes Act (14 of 1947- S.25-F, 10-Retrenchment compensation-Termination of services without payment of Dispute referred to Tribunal-Case of workman/workman that he had worked for 240 days in a year preceding his termination- Claim denied by management-Onus lies upon workman to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

10. So, it is. clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of Section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

11. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon 'hle Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29-12-2001. So, it is necessary to prove that in the preceding twelve calendar months of 29-12-2001, the workman had worked for 240 days.

13. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29-12-2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in Section 25-F read with Section 25-B of the Act, the provisions of Section 25- F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 7 जनवरी, 2013

का.आ. 261.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (आईडी संख्या 43/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-2013 को प्राप्त हुआ था।

[सं. एल-22012/350/2002-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 7th January, 2013

S.O. 261.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.43/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Murpar Project of (Umrer Area) of WCL, WCL Contractor, Singhnagar, Dahegaon, and their workmen, received by the Central Government on 7-1-2013.

[No. L-22012/350/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/43/2006

Date: 21-12-2012.

Party No. I(a) : The Sub Area Manager, WCL Murpar Project of (Umrer Area) of WCL, Post: Khadsanghi, Tah -Chimur, Distt. Chandrapur (MS)

(b) : M/s. Singh & Sons, WCL Contractor, Singhnagar, Dahegaon, Chhindwara Road, Distt. Nagpur(MS)

Versus

Party No. 2 : Shri Shankar, S/o Mahadevrao Jivtode, aged about 36 years, R/o Murpar, Post: Khadsanghi, Teh.-Chimur, Distt. Chandrapur Maharashtra.

AWARD

(Dated : 21st December, 2012)

In exercise of the powers conferred by clause (d) of sub-Section (1) and sub-Section 2 (A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman Shri Shankar S/o Mahdeverao Jivtode for adjudication, as per letter No. L-22012/350/2002-IR (CM-II) dated 21-03-2006, with the following schedule :-

> "Whether the action of the management of WCL and M/s. Singh and Sons Contractor of WCL in terminating the services of Shri Shankar, S/o Mahadevrao Jivtode is legal and justified ? If not, to what relief he is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman Shri Shankar Mahadevrao Jivtode, ("the workman" in short) filed the statement of claim and the management of the WCL ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that there is a coal mine at M urpar, which is known as "W.C. Ltd. Murpar Project" and the 5ame is under the control and supervision of party no. 1 . (a) i.e. Sub-Area manager, Murpar Project and party no. 1 (a) engaged M/s. f Bharat Gold Mines Ltd., Karnataka, ("B.G.M.L." in short) for the purpose of preparing underground. road upto the border of coal for the said coal mine and the contract of the said work was from 1992 to 1996 and the party no.1 (a) also, engaged party no.1 (b), M/s. Singh & Sons in its work w.e.f. 05-01-1997 and till party no.1 (b) is working with party no.1 (a) for the purpose of preparing the underground roads for functioning of the said coal mine and he was engaged by M/s. Bharat Gold Mines Limited, Kolar Gold Fields, Karnataka State ("B.G.M.L" in short) as a General Mazdoor on 10-09-1993 and he continued to work till 02-07-1996 and thereafter, his services were utilized by party no.1 (b) w.e.f. 20-01-1997 continuously till 28-12-2001 and party no.1(a) sent him for vocational training from time to time and he had under gone the said training successfully and as such, he is a workman/employee of party no. 1 (a) and party no. 1 (a) is the principal employer and his appointment by both the contractors was oral and the party no.1 (b) terminated his services orally w.e.f. 29-12-2001 and he had worked for more than 240 days preceding to his termination and while terminating his services, mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice, nor one month's wages in lieu of notice, nor retrenchment compensation was paid to him by parties no. 1 (a) and (b) and as such, termination of his services is illegal and though at the time of his termination, more than 700 workers were working with parties no. 1 (a) and (b), they did not prepare and publish final seniority list of all the workers including himself, at least seven days prior to the termination, as provided under Rule 77 of the Industrial Disputes (Central) Rules, 1957 and there was no compliance of Section 25-G of the Act and the termination of his services amounted to retrenchment and at the time of his retrenchment, plenty of work was available and now also, plenty of work is available with parties no. l(a) and l(b), but they did not re-employ him in violation of Section 25- H of the Act. It is further pleaded by the workman that he alongwith other. workers had submitted charter of vari.ous demand to the parties no. 1 (a) and 1 (b), but they did not fulfill the same and for that a dispute was pending before the ALC (C) Chandrapur and for the said reason, his services with many other workers were terminated and wages for December 2001 was not paid to him and as party no.1 was the principal employer and party no. 1 (b) was the contractor of party no. 1 (a), for each and every act of the party no.1 (b), the party no.1(a) was responsible and as such, the party no. 1 (a) is responsible for his illegal termination. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party no. 1 (a) resisted the claim by filing its written statement. It is necessary to mention here that inspite of notice, party no. 1 (b) neither appeared in the case nor contested the claim.

In its written statement, the party No. l(a) has pleaded inter-alia that it had entered into a contract with B.G.M.L. for carrying out open excavation, for construction of a pair of inclines and inclined shaft sinking in the coal mine of Murpar Project and as per the terms of contract, the open excavation work was to be completed within a period of 3½ months and the incline shaft drivage within eight months and it also awarded another contract to party no. 1 (b) -for construction of drivage of a pair of incline shaft through sedimentary rocks ~ like sand stone from seam VII to seam V at Murpar project of which the date of commencement and completion were 01-01-1997 and 28-02-1998 respectively and after a gap of 15 months, another contract was given to party no,. 1 (b) for construction of drivage of incline shaft at Murpar project and the dates of. commencement and completion of the said contract were 29-05-1999 and 01-12-2001 respectively and it (party no.1(a)) was related to party no.1(b) only as per the terms of contract and it was not at all responsible for providing employees to the contractors and it was the duty of the contractors to appoint the employees as per their need. It is further pleaded by the party no. 1 (a) that as per the provisions of the Mines Act, every person, whether employed by the principal employer or the contractor, whether in a casual capacity or in permanent capacity, to work in an underground mine, is required to be imparted vocational training by the principal employer and the cost of the training is borne by the contractor concerned and the engagement of the labourers was the job of the contractor and it was no way involved in the matter and no document has been produced by the workman to show that he was appointed by it and the contractor had appointed the workman till the completion of the contract and the documents filed by the workman show that he was appointed by party no. 1 (b) for contract works at Murpar project, as a temporary contingent labour in the project and in view of the principles enunciated by the Hon'ble Apex Court in the case of State of Karnataka Vs. Umadevi, Union Public Service Commission Vs. Girish Jayanti (2006 (2) SCALE 115) and many others, the workman is not entitled for regularization or reinstatement in service as he was a temporary workman.

The further case of party no. 1 (a) is that it has been entering into various contracts with various persons and each and every contract is an independent contract, which cannot be clubbed with each other and there was no nexus, between the contract given to B.G.M.L. and the contract given to party no. 1 (b), as they were of having different legal entities and if they had engaged the same workman for doing separate works, the workman did not become

permanent or entitle for regularization and there was never any relationship of employer and employee between it and the workman and he was never in its employment and as such, there was no question of compliance of the principles of Section 25- F, 25-G or H of the Act or payment of wages by it to the workman and the workman is not entitled for any relief.

4. The workman besides placing reliance on documentary evidence, filed his own evidence on affidavit in support of his claim. It is necessary to mention here that as nobody appeared on behalf of the party no.1 (a) to cross-examine the workman, on 15.11.2011, "no cross" order was passed.

It will not be out of place to mention here that on 30-01-2012, an application for grant of permission to cross-examine the workman and setting aside the exparte order, another application for dismissal of the reference on the basis of the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi, AIR 2006 SC 1806, and a pursis stating that the Tribunal has not framed the preliminary issue regarding the maintainability of the proceeding and that the proceeding is not maintainable as there existed no employer-employee relationship between WCL were filed by the learned advocate for the party No. 1. However, the said applications and pursis were rejected as not pressed as neither the advocate nor anybody else on behalf of party no. 1 appeared to move the same.

5. At the time of argument, it was submitted by the learned advocate for the workman that party no. 1 (a) had engaged M/s. B.G.M.L, a registered company and a Government of India Enterprises for preparation of underground roads upto the boarder of coal in Murpar Coal Mine and the said contract was from the year 1992 to 1996 and the said company had appointed the workman from 10-09-1993 to 02-07-1996 as a General Mazdoor and the workman was again appointed by party no. 1 (b) from 20-01-1997 to 28-12-2001 and the workman was sent for vocational training by party no. 1 (a) and as such, the workman was the employee of party no. 1 and party no. 1(a) is the principal employer and the appointment of the workman by both the contractors was oral appointment and the services of the workman were terminated by party no.1(b) w.e.f. 29-12-2001 and the workman had worked for more than 240 days with the party no. 1 (b), preceding his termination and before the termination of the services of the workman, mandatory provisions of Section 25-F of the Act were not complied with and neither one month's notice, nor one month's pay in lieu of the notice, nor retrenchment compensation was given to the workman and as such, the termination of the workman is illegal and such termination amounts to retrenchment and party no. 1 (a) and 1 (b) did not prepare and publish the seniority list as required under Rule 77 of Industrial Disputes (Central) Rules, 1957, even though more than 700 workers were working with them in various category and as such, there was violation of the provisions of Section 25-G of the Act and therefore, the workman is entitled to reinstatement in service with continuity and full back wages.

6. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. So, in this case, even if the case proceeded exparte against parties no. 1 (a) and 1 (b) still then, the workman is to discharge the burden by adducing evidence to show that legally he is entitled for the reliefs claimed by him.

7. In this case, it is the admitted case of the workman that he was engaged by M/s. B.G.M.L., who was given contract for construction of roads in the underground of Murpar colliery by party no. 1 (a) and BGML engaged him from 10-09-1993 to 02-07-1996 as a General Mazdoor and that he was again engaged by party no.1(b), another contractor from 20-01-1997 to 28-12-2001. It is never the case of the workman that he was engaged or appointed by party no. 1 (a). The only claim of the workman is that party no. 1 (a) had sent him for vocational training and he had under gone the training successfully. In support of such claim, the workman has filed the Xerox copy of the certificate granted in his favour for undergoing the vocational training from 02-09-1993 to 29-09-1993. It is necessary to mention here that it is obligatory to undergo vocational training for any person, who works underground in a coal mine in any capacity and it is the statutory duty of the management of the coal mine to arrange for such vocational training as per the Mines Act and the workman cannot be deemed to be an employee of party no.1(a), as because, he was sent for vocational training by party no.1(a).

8. It is well settled that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour. It is clear from the pleadings of the workman in the statement of claim and so also from his evidence on affidavit that he was never employed by the party no. 1 (a) and he was employed by the contractors and the party no.1(a) was not controlling or supervising the work of the workman. It is the definite

stand taken by workman that he had been working under the contractors. It would, thus, in my opinion not lie in his mouth to take a contradictory and inconsistent plea that he was also the workman of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the workman of the principal employer.

9. So far the termination of the services of the workman by the party no. 1 (b) is concerned, I think it necessary to mention the principle enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that :—

> "Though Section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into Section 25- B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended Section 25- B only consolidates the provisions of Section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of Section 25-F of the Principal Act by substituting in cuause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended Section 25 B and the unamended C 1 (b) of Section 25-F. No uninterrupted service is necessary it the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended Section 25- B".
>
> In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,
>
> "Industrial Disputes Act (14 of 1947). Section 25- B (1) and (2)- Continuous service-Scope of sub-Sections (1) and (2) is different, (words and phrases-Continuous Service).
>
> Before a workman can complain of retrenchment being not in consonance with Section 25- F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that Section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days with in the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of Section 25-B and chapter V-A."

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) has held that:

> "Industrial Disputes Act (14 of 1947—S.25-F, 10—Retrenchment compensation—Termination of services without payment of —Dispute referred to Tribunal—Case of workman/workman that he had worked for 240 days in a year preceding his termination— Claim denied by management—Onus lies upon workman to show that he had in fact worked for 240 days in a year—In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

10. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of Section 25- F of the Act, it is necessary to prove that the workman worked for 240 days in preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

11. The present case at hand in now to be considered with the touch stone the principles enunciated by the Hon'ble Apex Court and it is to be found out if the workman has been able to prove that he had infact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 29-12-2001. So, it is necessary to prove that in the preceding twelve calendar months of 29-12-2001, the workman had worked, for 240 days.

13. Except his oral evidence on affidavit, the workman has not produced any other evidence in support of his claim that he had actually worked for 240 days in the preceding 12 months of 29-12-2001. Thus the workman has failed to discharge the burden which was upon him.

As the workman has failed to satisfy the eligibility qualification prescribed in Section 25-F read with Section 25-B of the Act, the provisions of Section 25-F are not applicable to his case and as such, he is not entitled for any relief.

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 7 जनवरी, 2013

का.आ. 262.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राष्ट्रीय केमिकल फर्टीलाइजर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 1, मुम्बई के पंचाट (आईडी संख्या 44/06, 49/06, 47/06, 46/06, 45/06, 43/06, 42/06 और 39/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-01-2013 को प्राप्त हुआ था ।

[सं. एल-42012/219/2004-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 7th January, 2013

S.O. 262.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 44/06, 49/06, 47/06, 46/06, 45/06, 43/06, 42/06 & 39/06) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Rashtriya Chemical Fertilizers Limited and their workman, which was received by the Central Government on 07-01-2013.

[No. L-42012/219/2004-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1

MUMBAI

Present

Justice G. S. SARRAF

Presiding Officer

REFERENCE No. CGIT1/44 OF 2006

Parties : Employers in relation to the management of Rashtriya Chemical Fertilizers

And

Their workmen

Appearances :

For the Management	:	Mr. Alva, Adv.
For the Union	:	Ms. R. Todankar, Adv.
State	:	Maharashtra

Mumbai, dated the 13th day of December, 2012

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 the Central Government has referred the following dispute for adjudication to this Tribunal.

(1) Whether the contract between the contractor and Rashtriya Chemical Fertilizers Limited, Mumbai is sham and bogus and is a camouflage to deprive the workmen whose names are enlisted at Exhibit "A" from the benefits available to permanent workers of the Rashtriya Chemical Fertilizers Limited?

(2) Whether the workmen whose names are enlisted at Exhibit A should be declared as permanent workers and wages and consequential benefits to be paid to concerned workers?

2. An application has been filed today by General Secretary, General Employees Association stating therein that the second party is not interested in pursuing its claim against the first party and that it does not press its statement of claim and, therefore, an appropriate award be passed in this matter.

3. It is thus clear from the above application that the second party is not interested in pursuing and prosecuting this reference.

4. The reference is, therefore, disposed of as not prosecuted by the second party.

Award is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Justice G. S. SARRAF

Presiding Officer

REFERENCE No. CGIT1/49 OF 2006

Parties : Employers in relation to the management of Rashtriya Chemical Fertilizers

And

Their workmen

Appearances :

For the Management	:	Mr. Alva, Adv.
For the Union	:	Mr. J. P. Sawant, Adv.
State	:	Maharashtra

Mumbai, dated the 13th day of December, 2012

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the

Industrial Disputes Act 1947 the Central Government has referred the following dispute for adjudication to this Tribunal.

(1) Whether the contract between the contractor and Rashtriya Chemical Fertilizers Limited, Mumbai is sham and bogus and is a camouflage to deprive the workmen whose names are enlisted at Exhibit "A" from the benefits available to permanent workers of the Rashtriya Chemical Fertilizers Limited?

(2) Whether the workmen whose names are enlisted at Exhibit A should be declared as permanent workers and wages and consequential benefits to be paid to concerned workers?

2. An application has been filed today by Presiding, Maharashtra Rajya Mathadi, Transport and General Kamgar Union stating therein that the second party is not interested in pursuing its claim and contentions against the first party and that it does not press its statement of claim and, therefore, an appropriate award be passed in this matter.

3. It is thus clear from the above application that the second party is not interested in pursuing and prosecuting this reference.

4. The reference is, therefore, disposed of as not prosecuted by the second party.

Award is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1

MUMBAI

Present

Justice G. S. SARRAF

Presiding Officer

REFERENCE No. CGIT1/47 OF 2006

Parties : Employers in relation to the management of Rashtriya Chemical Fertilizers

And

Their workmen

Appearances :

For the Management	:	Mr. Alva, Adv.
For the Union	:	Ms. R. Todankar, Adv.
State	:	Maharashtra

Mumbai, dated the 13th day of December, 2012

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 the Central Government has referred the following dispute for adjudication to this Tribunal.

(1) Whether the contract between the contractor and Rashtriya Chemical Fertilizers Limited, Mumbai is sham and bogus and is a camouflage to deprive the workmen whose names are enlisted at Exhibit "A" from the benefits available to permanent workers of the Rashtriya Chemical Fertilizers Limited?

(2) Whether the workmen whose names are enlisted at Exhibit A should be declared as permanent workers and wages and consequential benefits to be paid to concerned workers?

2. An application has been filed today by General Secretary, General Employees Association stating therein that the second party is not interested in pursuing its claim against the first party and that it does not press its statement of claim and, therefore, an appropriate award be passed in this matter.

3. It is thus clear from the above application that the second party is not interested in pursuing and prosecuting this reference.

4. The reference is, therefore, disposed of as not prosecuted by the second party.

Award is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1

MUMBAI

Present

Justice G. S. SARRAF

Presiding Officer

REFERENCE No. CGIT1/46 OF 2006

Parties : Employers in relation to the management of Rashtriya Chemical Fertilizers

And

Their workmen

Appearances :

For the Management	:	Mr. Alva, Adv.
For the Union	:	Ms. R. Todankar, Adv.
State	:	Maharashtra

Mumbai, dated the 13th day of December, 2012

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 the Central Government has referred the following dispute for adjudication to this Tribunal.

(1) Whether the contract between the contractor and Rashtriya Chemical Fertilizers Limited, Mumbai is sham and bogus and is a camouflage to deprive the workmen whose names are enlisted at Exhibit "A" from the benefits available to permanent workers of the Rashtriya Chemical Fertilizers Limited?

(2) Whether the workmen whose names are enlisted at Exhibit A should be declared as permanent workers

and wages and consequential benefits to be paid to concerned workers?

2. An application has been filed today by General Secretary, General Employees Association stating therein that the second party is not interested in pursuing its claim against the first party and that it does not press its statement of claim and, therefore, an appropriate award be passed in this matter.

3. It is thus clear from the above application that the second party is not interested in pursuing and prosecuting this reference.

4. The reference is, therefore, disposed of as not prosecuted by the second party.

Award is passed accordingly.

Justice G. S. SARRAF, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present :

Justice G. S. SARRAF, Presiding Officer

Reference No. CGIT 1/45 of 2006

Parties : Employers in relation to the management of Rashtriya Chemical Fertilizers

And

Their workmen

Appearances :

For the Management	:	Mr. Alva, Adv.
For the Union	:	Ms. R. Todankar, Adv.
State	:	Maharashtra

Mumbai, dated the 13th day of December, 2012

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Central Government has referred the following dispute for adjudication to this Tribunal :

(1) Whether the contract between the contractor and Rashtriya Chemical Fertilizers Limited, Mumbai is sham and bogus and is a camouflage to deprive the workmen whose names are enlisted at Exhibit "A" from the benefits available to permanent workers of the Rashtriya Chemical Fertilizers Limited?

(2) Whether the workmen whose names are enlisted at Exhibit A should be declared as permanent workers and wages and consequential benefits to be paid to concerned workers?

2. An application has been filed today by General Secretary, General Employees Association stating therein that the second party is not interested in pursuing its claim against the first party and that it does not press its statement of claim and, therefore, an appropriate award be passed in this matter.

3. It is thus clear from the above application that the second party is not interested in pursuing and prosecuting this reference.

4. The reference is, therefore, disposed of as not prosecuted by the second party.

Award is passed accordingly.

Justice G. S. SARRAF, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present :

Justice G. S. SARRAF, Presiding Officer

Reference No. CGIT 1/43 of 2006

Parties : Employers in relation to the management of Rashtriya Chemical Fertilizers

And

Their workmen

Appearances :

For the Management	:	Mr. Alva, Adv.
For the Union	:	Ms. R. Todankar, Adv.
State	:	Maharashtra

Mumbai, dated the 13th day of December, 2012

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 the Central Government has referred the following dispute for adjudication to this Tribunal,:

(1) Whether the contract between the contractor and Rashtriya Chemical Fertilizers Limited, Mumbai is sham and bogus and is a camouflage to deprive the workmen whose names are enlisted at Exhibit "A" from the benefits available to permanent workers of the Rashtriya Chemical Fertilizers Limited?

(2) Whether the workmen whose names are enlisted at Exhibit A should be declared as permanent workers and wages and consequential benefits to be paid to concerned workers?

2. An application has been filed today by General Secretary, General Employees Association stating therein that the second party is not interested in pursuing its claim against the first party and that it does not press its statement of claim and, therefore, an appropriate award be passed in this matter.

3. It is thus clear from the above application that the second party is not interested in pursuing and prosecuting this reference.

4. The reference is, therefore, disposed of as not prosecuted by the second party.

Award is passed accordingly.

Justice G. S. SARRAF, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present :

Justice G. S. SARRAF, Presiding Officer

Reference No. CGIT 1/42 of 2006

Parties : Employers in relation to the management of Rashtriya Chemical Fertilizers

And

Their workmen

Appearances :

For the Management : Mr. Alva, Adv.

For the Union : Ms. R. Todankar, Adv.

State : Maharashtra

Mumbai, dated the 13th day of December, 2012

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Central Government has referred the following dispute for adjudication to this Tribunal :

(1) Whether the contract between the contractor and Rashtriya Chemical Fertilizers Limited, Mumbai is sham and bogus and is a camouflage to deprive the workmen whose names are enlisted at Exhibit "A" from the benefits available to permanent workers of the Rashtriya Chemical Fertilizers Limited?

(2) Whether the workmen whose names are enlisted at Exhibit A should be declared as permanent workers and wages and consequential benefits to be paid to concerned workers?

2. An application has been filed today by General Secretary, General Employees Association stating therein that the second party is not interested in pursuing its claim against the first party and that it does not press its statement of claim and, therefore, an appropriate award be passed in this matter.

3. It is thus clear from the above application that the second party is not interested in pursuing and prosecuting this reference.

4. The reference is, therefore, disposed of as not prosecuted by the second party.

Award is passed accordingly.

Justice G. S. SARRAF, Presiding Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present :

Justice G. S. SARRAF, Presiding Officer

Reference No. CGIT 1/39 of 2006

And

Their workmen

Appearances :

For the Management : Mr. Alva, Adv.

For the Union : Mr. R. D. Bhatt, Adv.

State : Maharashtra

Mumbai, dated the 13th day of December, 2012

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 the Central Government has referred the following dispute for adjudication to this Tribunal.

(1) Whether the contract between the contractor and Rashtriya Chemical Fertilizers Limited, Mumbai is sham and bogus and is a camouflage to deprive the workmen whose names are enlisted at Exhibit "A" from the benefits available to permanent workers of the Rashtriya Chemical Fertilizers Limited?

(2) Whether the workmen whose names are enlisted at Exhibit A should be declared as permanent workers and wages and consequential benefits to be paid to concerned workers?

2. An application has been filed today by President, Mumbai Shramik Sangh stating therein that the second party is not interested in pursuing its claim and contentions against the first party and that it does not press its statement of claim and, therefore, an appropriate award be passed in this matter.

3. It is thus clear from the above application that the second party is not interested in pursuing and prosecuting this reference.

4. The reference is, therefore, disposed of as not prosecuted by the second party.

Award is passed accordingly.

Justice G. S. SARRAF, Presiding Officer

नई दिल्ली, 7 जनवरी, 2013

का.आ. 263.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीएमपीडीआईएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (आईडी संख्या

149/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-01-2013 को प्राप्त हुआ था ।

[सं. एल-20012/150/1992-आई आर (सी-I)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 7th January, 2013

S.O. 263.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 149/1994) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CMPDIL and their workman, which was received by the Central Government on 07-01-2013.

[No. L-20012/150/1992-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act.

Ref. No. 149 OF 1994

Employer in relation to the management of CM.P.D.I.L Gondwana palace, Ranchi

AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : Sri A. K. Mishra, Sr. Presonnel Manager

For the workman : None.

State: Jharkhand Industry : Coal.

Dated : 20-12-2012

AWARD

The Government of India, Ministry of Labour, has in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"whether the action of the management of M/s. Central Mine Planning & Design Institute Ltd. Ranchi is justified in not considering the request of the workmen S/Shri Nandeo Kumar, Birju Mahato and K.C. Mahato for their employment as per the judgement dated 20.2.89 of Hon'ble Supreme Court of India in writ petition No. 9677 of 83 as their services were terminated by the management in August, 86 during pendency of above writ? If not, to what relief the workmen are entitled and from what date?"

Though parties filed their claim statement, management files a petition challenging jurisdiction of this court but the workman who did not file rejoinder in support of his claim, neither appeared nor took any steps continuously, though the management is present. It is seen the neither the union nor the workman has any interest in the case, which is lingering since 18 years therefore it is felt there is no dispute between parties. Hence no dispute award is passed. Communicate it to the Ministry.

R. K. SARAN, Presiding Officer

नई दिल्ली, 7 जनवरी, 2013

का.आ. 264.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 1, धनबाद के पंचाट (आईडी संख्या 127/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-01-2013 को प्राप्त हुआ था ।

[सं. एल-20012/241/1991-आई आर (सी-I)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 7th January, 2013

S.O. 264.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 127/1992) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ECL and their workman, which was received by the Central Government on 07-01-2013.

[No. L-20012/241/1991-IR (C-I)]
AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act.

Ref. No. 127 OF 1992

Employer in relation to the management of Chhapapur Colliery, Nirsa Area M/s. ECL

AND

Their workmen.

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances :

For the Employers : None.

For the workman : None.

State: Jharkhand **Industry : Coal.**

Dated : 20-12-2012

AWARD

The Government of India, Ministry of Labour, has in exercise of the power conferred by clause (d) of sub-section

(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

"whether the action of the management of M/s. Eastern Coal fields Ltd, Nirsa Area in relation to their chhapapur II Colliery in not regularising S/Shri Sibu Gope and 19 others as water Supplier is justified? If not, to what relief the workmen concerned are entitled?" A list of workman is enclosed.

Though both sides have filed their claim statements, none appears since last several dates to file any documents in support of their claim. Since none appears not filed documents. case of both sides has been closed. The parties are given opportunity to submit their argument or to file argument notes and are noticed through regd. post but no response received. It is felt that the parties have lost interest in the case. Hence "No Dispute" award is passed. Communicate it to the ministry.

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 जनवरी, 2013

का.आ. 265.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 61/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-01-2013 को प्राप्त हुआ था ।

[सं. एल-41012/98/2005-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 8th January, 2013

S.O. 265.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of South East Central Railway and their workmen, which was received by the Central Government on 08-01-2013.

[No. L-41012/98/2005-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

CGIT/NGP/61/2007

Date 6-12-2012

Both the parties are absent on calls. None appears on behalf of either of the parties. The union representative is absent. No statement of claim is filed.

Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No. 1 : The Sr. Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur (MS).

V/s

Party No.2 : The General Secretary, Parcel Porter Sanghatna, South East Central Railway, New Mankapur, Plot No. 37, Mhada Colony, Nagpur-30 (MS).

AWARD

(Dated : 6th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Ravindra Baburao Wasnik, for adjudication, letter No.L-41012/98/2005-IR(B-I) dated 14.11.2007, for adjudication with the following schedule:—

"Whether the Parcel Porters/Hammal are/workmen of the Railway Administration? If so, whether the action of the management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/stopping from the services of Shri Ravindra Baburao Wasnik, Parcel Porter w.e.f. 03.01.2005 is proper and justified? If not, what relief the Parcel Porter is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournments of the reference, neither any statement of claim nor written statement was filed.

3. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court mush fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produces evidence to prove his case. It the workman fails to appear or file written statement or produce evidence, the dispute referred by the Govt, cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner inspite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief. Hence, it is ordered :—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 8 जनवरी, 2013

का.आ. 266.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 60/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-01-2013 को प्राप्त हुआ था ।

[सं. एल-41012/133/2005-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 8th January, 2013

S.O. 266.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of South East Central Railway and their workman, received by the Central Government on 8-01-2013.

[No. L-41012/133/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/60/2007

Date 6-12-2012

Both the parties are absent on calls. None appears on behalf of either of the parties. The union representative is absent. No statement of claim is filed.

Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No. 1 : The Sr. Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur (MS).

V/s

Party No. 2 : The General Secretary, Parcel Porter Sanghatna, South East Central Railway, New Mankapur, Plot No. 37, Mhada Colony, Nagpur-30 (MS).

AWARD

(Dated : 6th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-sectjon 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Jagdish Sewakram Thawre, for adjudication, letter No.L-41012/133/2005-IR(B-I) dated 14-11-2007, for adjudication with the following schedule:—

> "Whether the Parcel Porters/Hammal are/workmen of the Railway Administration? If so, whether the action of the management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/stopping from the services of Shri Jagdish Sewakram Thawre, Parcel Porter w.e.f. 24-01-2005 is proper an justified? If not, what relief the Parcel Porter is entitled to?

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournments of the reference, neither any statement of claim nor written statement was filed.

3. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court must fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produces evidence to prove his case. It the workman fails to appear or file written statement or produce evidence, the dispute referred by the Govt. cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner inspite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief. Hence, it is ordered :—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 9 जनवरी, 2013

का.आ. 267.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्सस ऑपरेशन- के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण कोटा के पंचाट (आईडी संख्या 15/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-2013 को प्राप्त हुआ था ।

[सं. एल-42012/93/2002-आईआर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 9th January, 2013

S.O. 267.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 15/2002) of the Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Census Operation, and their workman, which was received by the Central Government on 9-1-2013.

[No. L-42012/93/2002-IR (C-II)]
B. M. PATNAIK, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.
निर्देश प्रकरण क्रमांक औ.न्या./केन्द्रीय/-15/2002
दिनांक स्थापित : 10-5-2002

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/93/2002-आई.आर./सी-II/दिनांक 20-3-2002 निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

पन्नालाल पुत्र बिशना मेहर, निवासी गोदल्याखेड़ी तहसील लाडपुरा, कोटा ।

-प्रार्थी श्रमिक

एवं

डॉयरक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूँगरी, जयपुर ।

--अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि:- श्री एस.एल.सोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि:- श्री सी.बी.सोरल

अधिनिर्णय दिनांक: 21-11-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय नई दिल्ली के प्रासंगिक आदेश दि. 20-3-2002 के द्वारा निम्न निर्देश/विवाद,औद्योगिक विवाद अधिनियम, 1947 (जिसे तुदपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

> "Whether the termination of services of Sh. Panna Lal S/o. Sh. Bishna Mehar by the management of Census Operation, Jaipur w.e.f. 30-6-1992 is legal and justified? If not, to what relief the dispuntant is entitled to ?",

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत अवगत करवाया गया ।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं. औ.न्या./केन्द्रीय/-15/2002 का निस्तारण किया जा रहा है । हालाँकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्राय: समान रूप से आयी है एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की है, अत: सभी प्रकरणों का हालाँकि अलग-अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्राय: समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है ।

4. इस प्रकरण में प्रार्थी ने अपने आपको आकस्मिक श्रमिक (केजुअल लेबर) बताया है एवं उसने नियुक्ति तिथि अप्रैल, 1991 एवं हटाने की तिथि 30-6-92 बतायी है । प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है । विशेष रूप से यहां यह उल्लेख करना भी समीचीन होगा कि प्राय: सभी प्रकरणों मे दलीलें व साक्ष्य भी जिस रूप में आयी है उसमें बहस के दौरान पक्षकारों के विद्वान प्रतिनिधिगण ने यह अभिकथन किया कि चूँकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजों एक जैसी ही है, अत: किसी भी एक प्रकरण की दस्तावेजी साक्ष्य जिसमें कि उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे । अत: इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है ।

5. प्रार्थी ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक अप्रैल, 1991 से आकस्मिक श्रमिक के पद पर सेवा में नियोजित किया गया । नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया । बाद में सहायक निदेशक,

जनगणना, कोटा कार्यालय समाप्त हो गया एवं उसका कार्य निदेशक जनगणना, राजस्थान जयपुर द्वारा किया जा रहा है । यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं । इस कार्य के लिए कर्मकारों की नियुक्ति पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा जारी की जाती है जिसमें प्रार्थी श्रमिक के आकस्मिक श्रमिक के पद की स्वीकृति भी दिनांक 21-12-93 तक जारी की गयी थी । प्रार्थी श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थी के पद की स्वीकृति भी महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थी को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थी कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयी । इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखित रूप से सेवा समाप्त की गयी । प्रार्थी की सेवा समाप्ति छंटनी की तारीफ में आता है एवं सेवा समाप्ति से पहले प्रार्थी की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्यदिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी । प्रार्थी की सेवायें दिनांक 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफजीएच की पालना नहीं करना विधिसम्मत नहीं है । प्रार्थी द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिटयाचिका संख्या 4295/92 प्रस्तुत की गयी जो दिनांक 9-5-97 को निर्णित की गयी एवं प्रार्थी को समझौता अधिकारी के यहाँ कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहाँ वार्ता असफल हुई । फिर प्रार्थी ने पुनः एक रिटयाचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अतः प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके आकस्मिक श्रमिक(केजुअल लेबर) पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले समस्त वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ ही समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दिनांक 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृति किये गये एवं पदों को बाद में तार दिनांक 4-3-92 के द्वारा 30-6-92 तक जारी रखने की स्वीकृति प्रदान की गयी । अतः प्रार्थी का यह कथन असत्य है कि इसकी नियुक्ति मौखिक रूप से की गयी, अपितु इन पद हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी पर नियुक्ति आकस्मिक श्रमिक के पद पर की गयी थी । प्रार्थी का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी । सभी क्षेत्रीय सारणीयन कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थी को सेवा से पृथक कर दिया गया था । प्रार्थी को अनुबन्ध में वर्णित समेकित वेतन रु. 750 प्रतिमाह पर अनुबन्धित किया गया था वे उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अतः मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि कम्पलाईर के पद तो 30-6-92 तक ही उपलब्ध थे । चूँकि प्रार्थी अनुबन्ध के आधार पर अनुबन्धित था, अतः वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय, राज. जयपुर-प्रकरण सं. औ.न्या./केन्द्रीय/21/99" के मामले में दिये गये निर्णय से भी स्पष्ट है । इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थी के क्लेम स्टेटमेन्ट को खारिज किये जाने की प्रार्थना की है ।

7. इसके पश्चात साक्ष्य प्रार्थी में प्रार्थी श्रमिक पन्नालाल का शपथ-पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी.शर्मा का शपथ-पत्र पेश हुआ, प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक, जनगणना, नई दिल्ली के आदेश दिनांक 30-11-93 की प्रति, रेफ्रेन्स की प्रति, उभयपक्ष के मध्य निष्पादित संविदा-प्रपत्र, महापंजीयक कार्यालय से जारी तार की फोटोप्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीयन कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों का संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालाँकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूँकि सभी के लिए यह सामग्री आधारभूत है, अतः सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्वान प्रतिनिधि ने दलील दी कि प्रार्थी की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थी । प्रार्थी ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । जनगणना अधिनियम की धारा 4, 11एवं 18 को उन्होंने उद्धृत किया । धारा 4 में जनगणना कार्य के लिए किनकों

नियुक्त किया जायेगा व किस प्रकार से पर्यवेक्षण किया जायेगा, इसका उपलब्ध है । धारा 11 में जनगणना कार्य की सूचना को हटाने या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है । आगे इसी अधिनियम में आकस्मिक श्रमिक (केजुअल लेबर) के पद का उल्लेख हुआ है । उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उद्धृत किया गया है । जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है । इस मामले में अनुबन्ध में जहाँ एक ओर प्रार्थी ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अतः ऐसा अनुबन्ध विधिसम्मत नहीं कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधान लागू भी नहीं होते हैं । प्रार्थी को तो रोजगार चाहिए था, अतः जहाँ पर भी अप्रार्थी ने हस्ताक्षर करवाये, वहाँ उसने हस्ताक्षर कर दिये । प्रार्थी का पद 30-11-93 तक उपलब्ध होने के बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थी ने 240 दिन से ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अतः इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थी का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :-

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू.एल.सी. /राज./पृष्ठ 340-इस न्यायनिर्णय में जनगणना विभाग में नियुक्त कर्मकारों की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये ।

(2) अनूप शर्मा बनाम अधिशासी अभियन्ता, पी.एच.डी. खण्ड I पानीपत/हरियाणा-2010(2)आर.एल.डब्ल्यू 1586(एस.सी.)-इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया ।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम-2010 सीडीआर 401 (एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहाँ नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नहीं है ।

(4) कमिश्नर केन्द्रीय विद्यालय संगठन एवं अन्य बनाम अनिल कुमार सिंह व अन्य-(2003)10 एस.सी.सी.284-इस मामले में प्रतिपादित किया गया कि जहाँ संविदात्मक नियुक्ति हुई है तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक ही सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भरती तक उसकी सेवायें रखी जानी चाहिए थीं, अतः इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी ।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य-2008 डब्ल्यू. एल.सी.(राज.) यू.सी. पृष्ठ 730-इस मामले में अंशकालीन कर्मकार को भी धारा 25-एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया ।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में नियुक्ति तथा समाप्ति दोनों ही अप्रार्थी द्वारा मौखिक रूप से बतायी है वह सर्वथा असत्य है, अपितु प्रार्थी की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह लिखित अनुबन्ध स्वयं प्रार्थी के द्वारा हस्ताक्षरित है एवं ऐसे अनुबन्ध पर प्रार्थी ने अपने हस्ताक्षर होना भी स्वीकार किया है । अतः अब प्रार्थी उस अनुबन्ध से परे जाकर यदि कोई कथन करता है तो वह कोई महत्व नहीं रखता है । प्रार्थी ने अनुबन्ध के तथ्यों को ही छिपा दिया है । प्रार्थी ने यह विवाद भी करीबन 10-11 वर्ष की देरी से उठाया है । इसके अलावा जनगणना का कार्य तो भारत सरकार द्वारा प्रति 10 वर्ष में एक बार कराया जाता है एवं उसमें महापंजीयक, जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों की जितने समय के लिए आवश्यकता होती है, वही स्वीकृति जारी होती है एवं उस स्वीकृति के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं । प्रार्थीया को भी संविदा के आधार पर रखा गया था । औ.वि.अधिनियम की धारा 2(ओ.ओ.)(बीबी) में जहां किसी कर्मकार की संविदा के अनविनिकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता । अतः इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थीया की छंटनी नहीं की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वतः समाप्त हो गयी थी। इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात जारी नहीं रखने का स्वयं जनगणना निदेशक का तार दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय सारणीयन कार्यालय जून, 92 तक ही काम कर पायेगें एवं इसी अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया । अतः जब प्रार्थीया का ना तो कोई कार्य शेष रहा एवं ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता । इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहाँ पर कोई औद्योगिक एवं व्यवसायिक गतिविधियाँ संचालित नहीं होती है, यह राज्य का एक सार्वभौमिक कर्तव्य है । प्रार्थीया स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अतः प्रार्थीया का क्लेम स्टेटमेन्ट खारिज किया

जावे । पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण खारिज किये जा चुके हैं । उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उद्धृत किये गये हैं :-

"(1) 1996 लेब.आई.सी. पृष्ठ (एस.सी.)-सुल्तान सिंह बनाम हरियाणा राज्य-इस मामले में जहाँ राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने से इन्कार कर दिया तो माननीय उच्चतम न्यायालय द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया ।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोजीकोड एंव अन्य-2000 लेब.आई.सी. 649 (केरला उ. न्या.)-इस मामले में यह प्रतिपादित किया गया कि जहाँ संविदा के नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य-आर.एल.डब्ल्यू. 2003 (1) राज. पृष्ठ 171-इस न्यायनिर्णय में प्रतिपादित किया गया कि जहाँ कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त होने के पश्चात् सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा-2001 (3)राज. पृष्ठ 1465-इस मामले में भी जहाँ अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेश कुमार के. भट्ट-2000 लेब.आई.सी. 818 (गुजरात उ. न्या.)- इस मामले में प्रतिपादित किया गया कि जहाँ किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटक-2003(97) एफ.एल.आर. 698-इस मामले में प्रतिपादित किया गया कि जहाँ किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के.आर. हेमावेती-2000 लेब. आई.सी. 3745(कर्नाटक उ.न्या.) इस मामले में यह प्रतिपादित किया गया कि जहाँ अस्थायी नियुक्ति संविदा के अधीन निश्चित अवधि के लिए हुई है तो 240 दिन से ज्यादा काम पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नहीं आता ।"

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों पर मनन किया ।

11. जहाँ तक प्रार्थी की ओर से प्रस्तुत "सावित्री विजय" के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भरती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया ? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया । अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्रार्थी/प्रार्थीया को कम्पायलर/चेकर/आकस्मिक श्रमिक/दैनिक वेतन भोगी श्रमिक के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अत: ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध-पत्र भरवाया गया मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर कर दिये । इस सम्बन्ध में न्यायाधिकरण का इतना ही कहना पर्याप्त है कि जहाँ एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रप्राप्ता व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मंजूर नहीं थी तो । अत: अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नहीं पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती है एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के सम्बन्ध में स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आयेंगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहाँ कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स (अर्न्तवस्तु) के सम्बन्ध में कोई मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अत: प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया, सम्बन्ध में अप्रार्थी की ओर से महापंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय,

राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का आदेश दिया गया एवं उसी के तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयी तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त कर दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नहीं थी एवं यह कार्य ना केवल राजस्थान अपितु पुरे भारत वर्ष में किया गया, अत: इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णन ''प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स/प्रा. लि. कालीकट बनाम श्रम न्यायलय, कोजीकोड'' का उदृत किया गया है एवं अन्य न्यायनिर्णय ''श्यामलाल सोनी बनाम जेडीए, अनिल कुमार शर्मा बनाम जिला महिला विकास अधिकरण, बॉसवाड़ा अभियन्ता,भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट'' जो उदृत किये गये हैं, इन सभी में यह स्पष्ट रूप से प्रतिपादित किया गया है कि जहॉ कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित अवधि समाप्त होने के फलस्वरूप यदि सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे में धारा 25-एफ अधिनियम की पालना किया जाना अपेक्षित नहीं है । हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई है तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायनिर्णय ''सैक्रेट्री, स्टेट आफ कर्नाटका एवं अन्य बनाम उमादेवी एवं अन्य-(2006) 4 एस.सी.सी. पृष्ठ 1'' का भी महत्वपूर्ण है । इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार है :-

"Service Law- Casual Labour/Temporary Employee- Status and rights of- Unequal bargaining power- Effect- Held, such employees do not have any right to regular or permanent public employment- Further, temporary, contractual, casual, ad hoc or daily-wage pubic employmnt must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it- Reasons for, discussed in detail- Labour Law."

"Phenonmenon of "litigious employment" which had arisen due to issuance of such directions by High Courts, and even Supreme Court, hiqhliqhted- Held, merely because an employee had continued under cover of an order of the court, under "litigious employment" or had been continued beyond the term of his appoinmtnet by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules- It is further not open to the court to prevent regular recruitment at the instance of such employees- Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायनिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार है:-

"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, "the judicial process would become another mode of recruitment dehors the rules."

इसी न्यायनिर्णय में आगे पैरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार है:-

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain- not at arm's length- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them, After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an emloyment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his " employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State.

The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temoporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डबल्यू. 2002(4) राज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायलय ने यह प्रतिपादित किया कि जहाँ कर्मकार की अनुबन्ध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबन्ध का नवीनीकरण नहीं करने पर एवं अनुबन्ध की अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2(oo) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह भी वर्णित है कि जहाँ वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नहीं माना जा सकता ।

17. अत: उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहाँ संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उद्धृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियाँ इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती है ।

18. इसके अलावा "मोह. राजमोहम्मद बनाम औ.न्या. एवं श्रम न्यायालय, वारंगल एवं अन्य-2003(2) एल.एल.जे. पृष्ठ 1149" के मामले में माननीय आन्ध्र प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है:-

"The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely severeign functions and welfare of the entire natation depends on the informtion collected, tabulated and prepared by the sadepartment. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तर प्रदेश राज्य एवं अन्य-2011(130) एफ.एल.आर. (इला.उ.न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्च न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लगे कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

"Appointment-Under the National Leprosy Eradication Programme launched by Central Government-Non-extention of scheme- work refused- Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department-Approach to State Government- Absorption refused-Legality of Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible- No interference warranted-Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धांतों की विधिक स्थिति आदि के विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा के अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्रार्थी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती हैं एवं माननीय आन्ध्र प्रदेश उच्च न्यायालय ने तो ऊपर उद्धृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(oo) के अपवाद (बीबी) के तहत जहां सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती है तो उसे छंटनी की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है । प्रार्थी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्वीकार किया है । अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं । तब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है । इसके अलावा प्रार्थी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है । प्रार्थी की सेवायें अप्रार्थी द्वारा

मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे भारत वर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है । यह प्रार्थी व अन्य प्रार्थीगण में से कोई यदि भरती की नियमित प्रक्रिया से गुजरे तो वे उस भरती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु सीमा से भी काफी ऊपर की आयु सीमा तक पहुँच चुके थे । अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार यही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30-6-92 को अप्रार्थी द्वारा की गयी है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश क्रमांक एल-42012/93/2002-आई.आर./सी.-11/ दिनांक 20-3-2002 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थी पन्नालाल को जो सेवायें समाप्त की गयी हैं, वह अनुबन्ध के तहत ही की गयी है एवं ऐसे में उनका यह कृत्य उचित एवं वैद्य था । अत: प्रार्थी पन्नालाल किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 9 जनवरी, 2013

का.आ. 268.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 78/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-2013 को प्राप्त हुआ था ।

[सं. एल-41012/31/2005-आईआर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th January, 2013

S.O. 268.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 78/2007) of the Central Government Industrial Tribunal, Nagpur as shown in the Annexure in the Industrial Dispute between the management of South East Central Railway and their workmen, received by the Central Government on 9-1-2013.

[No. L-41012/31/2005-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/78/2007

Date 6-12-2012

Both the parties are absent on calls. None appears on bahalf of either of the parties. The union representative is absent. None appears to move the petition filed on 10-09-2012 on bahalf of the petitioner. Hence the said petition is rejected as not pressed.

No statement of claim is filed.

Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No. 1 : The Sr. Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur (MS).

V/s

Party No. 2 : The General Secretary, Parcel Porter Sanghatna, South East Central Railway, New Mankapur, Plot No. 37, Mhada Colony, Nagpur-30(MS).

AWARD

(Dated: 06th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short)] the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Sanjay Chokhinath Panchbhai, for adjudication, as per letter No. L-41012/31/2005-IR(B-I) dated 01-11-2007, for adjudication with the following schedule:—

"Whether the Parcel Porters/Hammal are workmen of the Railway Administration? If so, whether the action of the Management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/stopping from the services of Shri Sanjay Chokhinath Panchbhai, Parcel Porter w.e.f. 03-01-2005 is proper and justified? If not, what relief the Parcel Porter is entitled to ?

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournments of the reference, neither any statement of claim nor written statement was filed.

3. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced,

the Party invoking the jurisdiction of the Court mush fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produces evidence to prove his case. It the workman fails to appear or file written statement or produce evidence, the dispute referred by the Govt. cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner in spite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief. Hence, it is ordered :—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 9 जनवरी, 2013

का.आ. 269.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 90/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-2013 को प्राप्त हुआ था ।

[सं. एल-41012/44/2005-आईआर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th January, 2013

S.O. 269.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 90/2007) of the Central Government Industrial Tribunal, Nagpur as shown in the Annexure in the Industrial Dispute between the management of South East Central Railway and their workmen, received by the Central Government on 9-1-2013.

[No. L-41012/44/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/90/2007

Date 6-12-2012

Both the parties are absent on calls. None appears on bahalf of either of the parties. The union representative is absent. No statement of claim is filed.

Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No. 1 : The Sr. Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur (MS).

V/s

Party No. 2 : The General Secretary, Parcel Porter Sanghatna, South East Central Railway, New Mankapur, Plot No. 37, Mhada Colony, Nagpur-30(MS).

AWARD

(Dated : 6th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Mohan Kumar P.Koppishetti, for adjudication, as per letter No. L-41012/44/2005-IR(B-I) dated 15-11-2007, for adjudication with the following schedule:—

"Whether the Parcel Porters/Hammal are workmen of the Railway Administration? If so, whether the action of the Management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/stopping from the services of Shri Mohan Kumar P.Koppishetti, Parcel Porter is proper and justified? If not, what relief the Parcel Porter is entitled to ?

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournments of the reference, neither any statement of claim nor written statement was filed.

3. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court mush fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court

setting out grounds on which the order is challenged and he must also produces evidence to prove his case. It the workman fails to appear or file written statement or produce evidence, the dispute referred by the Govt. cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner in spite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief. Hence, it is ordered :—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 9 जनवरी, 2013

का.आ. 270.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 79/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-2013 को प्राप्त हुआ था ।

[सं. एल-41012/43/2005-आईआर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th January, 2013

S.O. 270.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 79/2007) of the Central Government Industrial Tribunal, Nagpur as shown in the Annexure in the Industrial Dispute between the management of South East Central Railway and their workmen, received by the Central Government on 9-1-2013.

[No. L-41012/43/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/79/2007

Date 6-12-2012

Both the parties are absent on calls. None appears on bahalf of either of the parties. The union representative is absent. No statement of claim is filed.

Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No. 1 : The Sr. Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur (MS).

V/s

Party No. 2 : The General Secretary, Parcel Porter Sanghatna, South East Central Railway, New Mankapur, Plot No. 37, Mhada Colony, Nagpur-30(MS).

AWARD

(Dated: 06th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Umesh Bhajandas Gajbhiye, for adjudication, as per letter No. L-41012/43/2005-IR(B-I) dated 08-11-2007, for adjudication with the following schedule:—

"Whether the Parcel Porters/Hammal are workmen of the Railway Administration? If so, whether the action of the management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/stopping from the services of Shri Umesh Bhajandas Gajbhiye, Parcel Porter w.e.f. Porter w.e.f. 03-01-2005 is proper and justified? If not, what relief the Parcel Porter is entitled to?

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournments of the reference, neither any statement of claim nor written statement was filed.

3. It is well settled that if a party challengs the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court mush fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produces evidence to prove his case. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Govt. cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been

filed by the petitioner inspite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief. Hence, it is ordered:—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 9 जनवरी, 2013

का.आ. 271.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 80/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-1-2013 को प्राप्त हुआ था ।

[सं. एल-41012/86/2005-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th January, 2013

S.O. 271.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/2007) of the Central Government Industrial Tribunal-Cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of South East Central Railway and their workmen, which was received by the Central Government on 9-1-2013.

[No. L-41012/86/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/80/2007

Date 6-12-2012

Both the parties are absent on calls. None appears on bahalf of either of the parties. The union representative is absent. No statement of claim is filed.

Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No. 1 : The Sr. Divisional Commercial Manager, South East Central Railway, Nagpur Division, Nagpur (MS).

V/s

Party No. 2 : The General Secretary, Parcel Porter Sanghatna, South East Central Railway, New Mankapur, Plot No. 37, Mhada Colony, Nagpur-30(MS).

AWARD

(Dated: 6th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short) the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Paras Gyaniram Borkar, for adjudication, as per letter No. L-41012/86/2005-IR(B-I) dated 08-11-2007, for adjudication with the following schedule:—

"Whether the Parcel Porters/Hammal are workmen of the Railway Administration? If so, whether the action of the management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/stopping from the services of Shri Paras Gyaniram Borkar, Parcel Porter w.e.f. 03-01-2005 is proper and justified? If not, what relief the Parcel Porter is entitled to ?

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournments of the reference , neither any statement of claim nor written statement was filed.

3. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court mush fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produces evidence to prove his case. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Govt. cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner in spite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief. Hence, it is ordered:—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 9 जनवरी, 2013

का.आ. 272.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 82/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-1-2013 को प्राप्त हुआ था।

[सं. एल-41012/91/2005-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th January, 2013

S.O. 272.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 82/2007) of the Central Government Industrial Tribunal Nagpur as shown in the Annexure, in the Industrial Dispute between the management of South East Central Railway and their workmen, which was received by the Central Government on 09-01-2013.

[No. L-41012/91/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/82/2007

Dated 6-12-2012

Both the parties are absent on calls. None appears on behalf of either of the parties. The union representative is absent. No statement of claim is filed.

Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No. 1 :

The Sr. Divisional Commercial Manager,
South East Central Railway,
Nagpur Division,
Nagpur (MS).

V/s

Party No. 2 :

The General Secretary,
Parcel Porter Sanghatna,
South East Central Railway,
New Mankapur, Plot No. 37,
Mhada Colony,
Nagpur-30(MS).

AWARD

(Dated: 6th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Deepak Lanjewar, for adjudication, as per letter No.L-41012/91/2005-IR(B-I) dated 12-11-2007, for adjudication with the following schedule :—

"Whether the Parcel Porters/Hammal are workmen of the Railway Administration ? If so, whether the action of the management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/stopping from the services of Shri Deepak Lanjewar, Parcel Porter, w.e.f. 03-01-2005 is proper and justified? If not, what relief the Parcel Porter is entitled to ?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournments of the reference, neither any statement of claim nore written statement was filed.

3. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court mush fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produces evidence to prove his case. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Govt. cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner in spite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief. Hence, it is ordered :—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 9 जनवरी, 2013

का.आ. 273.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य

रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 81/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-1-2013 को प्राप्त हुआ था ।

[सं. एल-41012/95/2005-आई आर (बी-I)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th January, 2013

S.O. 273.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 81/2007) of the Central Government Industrial Tribunal Nagpur now as shown in the Annexure, in the Industrial Dispute between the management of South East Central Railway and their workman, which was received by the Central Government on 09-01-2013.

[No. L-41012/95/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/81/2007

Dated 6-12-2012

Both the parties are absent on calls. None appears on behalf of either of the parties. The union representative is absent. No statement of claim is filed.

Perused the record. On the previous date, a last chance was given to the petitioner to file the statement of claim. In spite of the same, no statement of claim has been filed. It appears from record that the petitioner is not interested to proceed with the case. Hence, the case is closed. Put up later on for award.

Party No. 1 :

The Sr. Divisional Commercial Manager,
South East Central Railway,
Nagpur Division,
Nagpur (MS).

V/s

Party No. 2 :

The General Secretary,
Parcel Porter Sanghatna,
South East Central Railway,
New Mankapur, Plot No. 37,
Mhada Colony,
Nagpur-30(MS).

AWARD

(Dated: 6th December, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of South East Central Railway and their workman, Shri Bisan Kawdu Thawkar for adjudication, as per letter No.L-41012/95/2005-IR(B-I) dated 12-11-2007, for adjudication with the following schedule :—

> "Whether the Parcel Porters/Hammal are workmen of the Railway Administration ? If so, whether the action of the management of South East Central Railway, Nagpur Division, Nagpur (MS) in terminating/stopping from the services of Shri Bisan Kawdu Thawkar Parcel Porter, w.e.f. 03-01-2005 is proper and justified? If not, what relief the Parcel Porter is entitled to ?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In spite of appearance of the parties in the case and several adjournments of the reference, neither any statement of claim nor written statement was filed.

3. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the Party invoking the jurisdiction of the Court mush fail. Whenever a workman raises a dispute challenging the validity of the termination of the service, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produces evidence to prove his case. If the workman fails to appear or file written statement or produce evidence, the dispute referred by the Govt. cannot be answered in his favour and he would not be entitled to any relief.

4. Applying the above principles to the present case in hand, it is found that no statement of claim has been filed by the petitioner in spite of giving sufficient scope for the same and no evidence has been produced in support of his claim, the workman is not entitled to any relief. Hence, it is ordered :—

ORDER

The reference is answered against the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 9 जनवरी, 2013

का.आ. 274 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्सस

ऑपरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ संख्या 14/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-01-2013 को प्राप्त हुआ था ।

[सं. एल-42012/92/2002-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 9th January, 2013

S. O. 274.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.14/2002) of the Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Census Operation and their workmen, received by the Central Government on 09-01-2013.

[No. L-42012/92/2002-IR (C-II)]

B. M. PATNAIK, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी—श्री प्रकाश चन्द्र पगारिया, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ. न्या./केन्द्रीय/-14/2002

दिनांक स्थापित : 10-5-2002

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/92/2002-आई आर (सी-II) दिनांक 20-3-2002

निर्देश विवाद अन्तर्गत धारा 10(1) (घ)
औद्योगिक विवाद अधिनियम, 1947

मध्य

अशोक कुमार पुत्र सूरजमल यादव, निवासी ग्राम टहला, तहसील दीगोद, जिला कोटा

—प्रार्थी श्रमिक

एवं

डॉयरेक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूँगरी, जयपुर ।

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि:- श्री एस. एल. सोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि:- श्री सी.बी.सोरल

अधिनिर्णय दिनांक: 21-11-2012

: अधिनिर्णय :

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासंगिक आदेश दि. 20-3-2002 के द्वारा निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10 (1) (घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :—

> "Whether the termination of services of Sh. Ashok Kumar S/o Sh. Suraj Mal Yadav by the management of Census Operation Jaipur w.e.f. April, 1992 is legal and justified ? If not, to what relief the disputant is entitled to ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत अवगत करवाया गया ।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं औ.न्या/केन्द्रीय/-14/2002 का निस्तारण किया जा रहा है । हालांकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्राय: समान रूप से आयी है एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की है, अत: सभी प्रकरणों का हालांकि अलग-अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्राय: समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है ।

4. इस प्रकरण में प्रार्थी ने अपने आपको दैनिक वेतन भोगी श्रमिक बताया है एवं उसने अपनी नियुक्ति तिथि 27-9-91 एवं हटाने की तिथि 30-6-92 बतायी है । प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है । विशेष रूप से यहाँ यह उल्लेख करना भी समीचीन होगा कि प्राय: सभी प्रकरणों में दलीलें व साक्ष्य भी जिस रूप में आयी है उसमे बहस के दौरान पक्षकारों के विद्वान प्रतिनिधिगण ने यह अभिकथन किया कि चूंकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजी एक जैसी ही है, अत: किसी भी एक प्रकरणों की दस्तावेजी साक्ष्य जिसमें के उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे । अत: इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है ।

5. प्रार्थी ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक 27-9-91 से दैनिक वेतन भोगी श्रमिक के पद पर सेवा मे नियोजित किया गया । नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया । बाद में सहायक निदेशक, जनगणना, कोटा कार्यालय समाप्त हो गया एवं उसका कार्य निदेशक,

जनगणना, राजस्थान जयपुर द्वारा किया जा रहा है । यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं । इस कार्य के लिए कर्मकारों की नियुक्ति, पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा जारी की जाती है जिसमें प्रार्थी श्रमिक के आकस्मिक श्रमिक के पद की स्वीकृति भी दि. 21-12-93 तक जारी की गयी थी । प्रार्थी श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थी के पद की स्वीकृति महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थी को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थी कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयी । इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखिक रूप से सेवा समाप्त की गयी । प्रार्थी की सेवा समाप्ति छंटनी की तारीफ में आता है एवं सेवा समाप्ति से पहले प्रार्थी की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्यदिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी । प्रार्थी की सेवायें दि. 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफ, जी, एच, की पालना नहीं करना विधिसम्मत नहीं है । प्रार्थी द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिट याचिका संख्या 4295/92 प्रस्तुत की गयी जो दि. 9-5-97 को निर्णित की गयी एवं प्रार्थी को समझौता अधिकारी के यहां कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहां वार्ता असफल हुई । फिर प्रार्थी ने पुनः एक रिट याचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अतः प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके दैनिक वेतन भोगी श्रमिक पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले समस्त वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ ही समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दि. 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृत किये गये एवं पदों को बाद में तार दि. 4-3-92 के द्वारा जून, 92 तक जारी रखने की स्वीकृति प्रदान की गयी । अतः प्रार्थी का यह कथन असत्य है कि इसकी नियुक्ति मौखिक रूप से की गयी, अपितु इन पद हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी की नियुक्ति आकस्मिक श्रमिक के पद पर की गयी थी । प्रार्थी का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी थी । सभी क्षेत्रीय सारणीयन कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थी को सेवा से पृथक कर दिया गया था । प्रार्थी को अनुबन्ध में वर्णित समेकित वेतन रु. 750 प्रतिमाह पर अनुबन्धित किया गया था व उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अतः मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि कम्पलाईर के पद तो 30-6-92 तक ही उपलब्ध थे । चूंकि प्रार्थी अनुबन्ध के आधार पर अनुबन्धित था, अतः वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय राज. जयपुर– प्रकरण सं. औ. न्या./केन्द्रीय/21/99" के मामले में दिये गये निर्णय से भी स्पष्ट है इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थी के क्लेम स्टेटमेन्ट को खारिज किये जाने की प्रार्थना की है ।

7. इसके पश्चात साक्ष्य प्रार्थी में प्रार्थी श्रमिक अशोक कुमार का शपथ-पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी. शर्मा का शपथ-पत्र पेश हुआ, प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक जनगणना नई दिल्ली के आदेश दि. 30-11-93 की प्रति, रेंफ्रन्स की प्रति, उभयपक्ष के मध्य निष्पादित संविदा-प्रपत्र, महापंजीयक कार्यालय से जारी तार की फोटोप्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीयन कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों की संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालांकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूंकि सभी के लिए यह सामग्री आधारभूत है, अतः सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्वान प्रतिनिधि ने दलील दी कि प्रार्थी की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थीं । प्रार्थी ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । जनगणना अधिनियम की धारा 4, 11 एवं 18 को

उन्होंने उद्धृत किया । धारा 4 में जनगणना कार्य के लिए किनको नियुक्त किया जायेगा व किस प्रकार से पर्यवेक्षण किया जायेगा, इसका उपबन्ध है । धारा 11 में जनगणना कार्य की सूचना को हटाने या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है । आगे इसी अधिनियम में आकस्मिक श्रमिक (केजुअल लेबर) के पद का उल्लेख हुआ है । उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उद्धृत किया गया है । जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है । इस मामले में अनुबन्ध में जहां एक ओर प्रार्थी ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अतः ऐसा अनुबन्ध विधिसम्मत नही कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधन लागू भी नहीं होते हैं । प्रार्थी को तो रोजगार चाहिए था, अतः जहाँ पर भी अप्राथी ने हस्ताक्षर करवाये, वहां उसने हस्ताक्षर कर दिये । प्रार्थी का पद 30-11-93 तक उपलब्ध होने के बावजूद तक उपलब्ध होने के बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थी ने 240 दिन से ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अतः इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थी का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :-

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू. एल. सी./राज./पृष्ठ 340– इस न्यायनिर्णय में जनगणना विभाग में नियुक्त कर्मकारों की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये ।

(2) अनूप शर्मा बनाम अधिशासी अभियन्ता, पी.एच.डी. खण्ड 1 पानीपत/हरियाणा-2012(2) आर.एल.डब्ल्यू. 1586(एस. सी)– इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया ।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम–2010 सीडीआर 401(एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहां नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नही है ।

(4) कमिश्नर केन्द्रीय विद्यालय संघटन एवं अन्य बनाम अनिल कुमार सिंह व अन्य–(2003)10 एस.सी.सी. 284– इस मामले में प्रतिपादित किया गया कि जहां संविदात्मक नियुक्ति हुई है तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक ही सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भरती तक उसकी सेवायें रखी जानी चाहिएं थीं, अतः इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी ।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य–2008 डब्ल्यू. एल.सी.(राज.) यू.सी. पृष्ठ 730– इस मामले में अंशकालीन कर्मकार को भी धारा 25-एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में नियुक्ति तथा समाप्ति दोनों ही अप्रार्थी द्वारा मौखिक रूप से बतायी है वह सर्वथा असत्य है, अपितु प्रार्थी की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह लिखित अनुबन्ध स्वयं प्रार्थी के द्वारा हस्ताक्षरित है एवं ऐसे अनुबन्ध पर प्रार्थी ने अपने हस्ताक्षर होना भी स्वीकार किया है । अतः अब प्रार्थी उस अनुबन्ध से परे जाकर यदि कोई कथन करता है तो वह कोई महत्व नहीं रखता है । प्रार्थी ने अनुबन्ध के तथ्यों को ही छिपा दिया । प्रार्थी ने यह विवाद भी करीबन 10-11 वर्ष की देरी से उठाया है । इसके अलावा जनगणना का कार्य तो भारत सरकार द्वारा प्रति 10 वर्ष में एक बार कराया जाता है एवं उसमें महापंजीयक जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों की जितने समय के लिए आवश्यकता होती है, वही स्वीकृति जारी होती है एवं उस स्वीकृति के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं । प्रार्थी को भी संविदा के आधार पर रखा गया था । औ.वि. अधिनियम की धारा 2(00)(बीबी) में जहां किसी कर्मकार की संविदा के अनविनिकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता । अतः इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थी की छंटनी नही की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वतः समाप्त हो गयी थी । इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात् जारी नहीं रखने का स्वयं जनगणना निदेशक का तार दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय सारणीयन कार्यालय जून, 92 तक ही काम कर पायेंगें एवं इसी अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया । अतः जब प्रार्थी का ना तो कोई कार्य शेष रहा एवं

ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता । इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहां पर कोई औद्योगिक एवं व्यवसायिक गतिविधियाँ चालित नहीं होती है, यह राज्य का एक सार्वभौमिक कर्तव्य है । प्रार्थी स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अत: प्रार्थी का क्लेम स्टेटमेन्ट खारिज किया जावे । पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण खारिज किये जा चुके हैं । उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उद्धृत किये गये हैं :–

"(1) 1996 लेब.आई.सी. पृष्ठ 915 (एस.सी.)– सुल्तान सिंह बनाम हरियाणा राज्य– इस मामले में जहाँ राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने से इन्कार कर दिया तो माननीय उच्चतम न्यायालय द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया ।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोजीकोड एवं अन्य–2000 लेब.आई.सी. 649 (केरला उ.न्या.)– इस मामले में यह प्रतिपादित किया गया कि जहाँ संविदा के नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य–आर.एल.डब्ल्यू. 2003(1) राज. पृष्ठ 171–इस न्यायनिर्णय में प्रतिपादित किया गया कि जहाँ कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त होने के पश्चात् सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बांसवाड़ा– 2001(3) राज. पृष्ठ 1465–इस मामले में भी जहाँ अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट–2000 लेब. आई.सी 818 (गुजरात उ.न्या.)–इस मामले में प्रतिपादित किया गया कि जहाँ किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटका– 2003(97) एफ.एल.आर. 608– इस मामले में प्रतिपादित किया गया कि जहाँ किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के. आर. हेमावेत्ती–2000 लेब.आई.सी 3745 (कर्नाटक उ. न्या.)– इस मामले में यह प्रतिपादित किया गया कि जहाँ अस्थायी नियुक्ति संविदा के अधीन निश्चित् अवधि के लिए हुई तो 240 दिन से ज्यादा काम करने पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नही आता ।"

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों पर मनन किया ।

11. जहाँ तक प्रार्थी की ओर से प्रस्तुत "सावित्री विजय" के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भरती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया । अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्रार्थी/प्रार्थीया को कम्पायलर/चेकर/आकस्मिक श्रमिक/दैनिक वेतन भोगी श्रमिक के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अत: ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध पत्र भरवाया गया तथा मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर का दिये । इस सम्बन्ध में न्यायाधिकरण का इतना ही कहना पर्याप्त है कि जहाँ एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रयाफ्ता व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मन्जूर नहीं थी तो । अत: अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नही पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती है एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के सम्बन्ध में

स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आयेंगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहाँ कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स(अर्न्तवस्तु) के सम्बन्ध में कोई मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अत: प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया, इस सम्बन्ध में अप्रार्थी की ओर से महापंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय, राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का आदेश दिया गया एवं उसी के तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयी तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त का दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नही थी एवं यह कार्य ना केवल राजस्थान अपितु पूरे भारत वर्ष में किया गया, अत: इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णय "प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स प्रा.लि. कालीकट बनाम श्रम न्यायालय, कोजीकोड" का उद्दृत किया गया है एवं अन्य न्यायनिर्णय "श्यामलाल सोनी बनाम जेडीए, अनिलकुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा, अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट" जो उद्दत किये गये हैं, इन सभी में यह स्पष्ट रूप से प्रतिपादित किया गया है कि जहाँ कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित अवधि समाप्त होने के फलस्वरूप यदि सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे में धारा 25-एफ अधिनियम की पालना किया जाना अपेक्षित नहीं है । हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई हैं तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायानिर्णय "सेकेट्री, स्टेट आफ कर्नाटक एवं अन्य बनाम उमादेवी एवं अन्य–(2006) 4 एस.सी.सी. पृष्ठ 1" का भी महत्वपूर्ण है इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार है :–

"Service Law—Casual Labour/Temporary Employee—Status and rights of- Unequal bargaining power—Effect—Held, such employees do not have any right to regular or permanent public employment—Further, temporary, contractual, casual, ad hoc or daily-wage pubic employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it—Reasons for, discussed in detail—Labour Law,"

"Phenonmenon of "litigious employment" which had arisen due to issuance of such directions by High Courts, and even Supreme Court, highlighted-Held, merely because an employee had continued under cover of an order of the court, under "litigious employment" or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules—It is further not open to the court to prevent regular recruitment at the instance of such employees- Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायानिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार है :–

"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, "the judicial process would become another mode of recruitment dehors the rules."

इसी न्यायनिर्णय में आगे पैरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार हैं :–

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain— not at arm's length- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has

temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an emloyment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temoporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a aperson cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

15. इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डब्ल्यू. 2002 (4) राज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायालय ने यह प्रतिपादित किया कि जहाँ कर्मकार की अनुबन्ध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबन्ध का नवीनीकरण नहीं करने पर एवं अनुबन्ध कर अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2 (oo) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह भी वर्णित है कि जहाँ वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नही माना जा सकता ।

17. अत: उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहाँ संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उदृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियाँ इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती है ।

18. इसके अलावा "मोह. राजमोहम्मद बनाम औ. न्या. एवं श्रम न्यायालय, वारंगल एवं अन्य-2003 (2) एल.एल.जे. पृष्ठ 1149" के मामले में माननीय आन्ध्र प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है :-

> "The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely severeign functions and welfare of the entire natation depends on the information collected, tabulated and prepared by the sadepartment. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तरप्रदेश राज्य एवं अन्य-2011 (130) एफ.एल.आर. (इला. उ.न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्चतम न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लगे कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

"Appointment—Under the National Leprosy Eradication Programme launched by Central Government—Non-extention of scheme— work refused—Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department—Approach to State Government—Absorption refused—Legality of—Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible—No interference warranted—Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धातों की विधिक स्थिति आदि कि विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा कि अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्रार्थी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती है एवं माननीय आन्ध्रप्रदेश उच्चतम न्यायालय ने तो ऊपर उद्दृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(oo) के अपवाद (बीबी) के तहत जहाँ सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती हैं तो उसे छंटनी की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है । प्रार्थी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्त्रीकार किया है । अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं । अब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है । इसके अलावा प्रार्थी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है । प्रार्थी की संवायें अप्रार्थी द्वारा मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे भारत वर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है । यह प्रार्थी व अन्य प्रार्थीगण में से कोई यदि भरती की नियमित प्रक्रिया से गुजरे तो वे उस भरती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु-सीमा से भी काफी ऊपर की आयु सीमा तक पहुँच चुके थे । अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार सही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30-6-92 को अप्रार्थी द्वारा की गया है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश क्रमांक एल-42012/92/2002(आईआर (सी-II) दि. 20-3-2002 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थी अशोक कुमार की जो सेवायें समाप्त की गयी है, वह अनुबन्ध के तहत ही की गयी है एवं ऐसे में उनका यह कृत्य उचित एवं वैध था । अत: प्रार्थी अशोक कुमार किसी प्रकार का कोई अनुतोष प्राप्त करने की अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 9 जनवरी, 2013

का.आ. 275.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सी.जी.आई.टी./एल सी/आर/35/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-1-13 को प्राप्त हुआ था।

[सं. एल-12012/385/97-आई आर (बी-II)]
शीश राम, अनुभाग अधिकारी

New Delhi, the 9th January, 2013

S.O. 275.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGIT/LC/R/No. 35/98) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 7-1-2013

[No. L-12012/385/97-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CG IT/LC/R/35/98

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Mahadev Das,
S/o Late Shri Jeevan Prasad Das,
Beladula Deolas Chowk, Raigarh — Workman

Versus

The Regional Manager,
Central Bank of India,
1st Floor Bombay Market,
GE Road, Raipur — Management

AWARD

Passed on this 27th day of November, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/385/97/IR(B-II) dated 26-2-98 has referred the following dispute for adjudication by this tribunal :—

> " Whether the action of the management of Central Bank of India in terminating the services of Shri Mahadev Das, Ex.Temporary Class IV employee w.e.f. 31-12-1992 and not absorbing him in Bank's services is legal and justified? If not, to what relief the said workman is entitled ?"

2. The case of the workman, in short, is that he was appointed as Messenger on daily wages in Raigarh Branch of the Central Bank of India w.e.f. 19-10-79. He worked continuously till 31-12-92 when he was verbally terminated from services without notice and without payment of retrenchment compensation in violation of the provision of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947) . It is stated that he is also known as Ashok Kumar Das in his house and on various dates he was made to work in this name. It is stated that there was settlement with the Unions and the management that the persons who had been engaged and completed 180 days as on 31-12-1989 would be considered for regularisation. It is submitted that the management be directed to reinstate him with back wages and also to regularize in the services of the Bank.

3. The management appeared and filed Written Statement. The case of the management, interalia, is that the alleged workmen was simply a labour on daily wages employed for completion of specific job work which by afflux of time came to an end. He was never employed in the Bank as employee. It is denied that he was made to work in the name of Ashok Kumar Das. It is also denied that he worked for 520 days during the period of 1982 to 1990. The provision of the Act, 1947 is not applicable in his case. He did not possess requisite criteria for taking in the service of the Bank. It is submitted that the reference be answered in favour of the management.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication :—

I. Whether the action of the management in terminating the services of the workman w.e.f. 31-12-1992 is legal and justified ?

II. Whether the alleged workman is entitled to be absorbed in the Bank's services ?

III. To what relief the workman is entitled ?

5. Issue No. 1

The workman has adduced oral and documentary evidence to prove his case. The workman Shri Mahadev Das has supported the case in his evidence. He has stated that he was in continuous employment during the period from 19-10-1979 to 31-12-1992. He has stated at para-26 that the entire work he had done is in Exhibit W/8. This shows that he had worked only as per Exhibit W/8. He has further stated that there is no certificate of the work he did in another's name. This shows that there is no proof that he had also worked in the name of Shri Ashok Kumar Das. It appears that this fact that he worked also in the name of Shri Ashok Kumar Das is raised for the first time in statement of claim.

6. Now let us examine the documentary evidence of the workman. The workman has stated in his evidence that he worked only as per certificate which is marked as Exhibit W/8. Exhibit W/8 shows that he worked from 1980 to 1984 only. This clearly shows that he had never continuously worked rather he worked intermittently. It also appears that he had never worked 240 days in any calendar year. It also shows that he had not worked 240 days in twelve calendar months preceding the date of alleged termination. This shows that he shall not be deemed to be in continuous service for a period of one year as in Section 25-B of the Act, 1947.

7. Exhibit W/1 is the Performa sent by the Regional Manager to all branches of the bank in Raipur Region for submitting the details of the persons engaged on temporary basis and had completed 180 days as on 31-10-1989. Exhibit W/2 is the legal notice dated 24-5-96 given on behalf of the workman. This legal notice does not corroborate the fact that he had also worked in the name of Ashok Kumar Das. He has claimed that he worked 620 days. This itself shows that from 19-10-79 to 1992 he had not worked continuously. There is nothing to show that he had worked 240 days in twelve calendar months preceding the date of reference. Exhibit W/3 is the reply dated 7-6-96 of the management. This shows that the management had admitted that he worked from 1979 to 1987 for 520 days only as daily wager intermittently. This document does not prove that the workman was working continuously. Exhibit W/4 is the forwarding letter dated 7-4-97 of Asstt. Area Manager of the reply to Assistant Labour Commissioner (Central) of the application of the workman. Exhibit W/5 is the reply of the management. This reply clearly shows that his application for considering his regular employment was rejected as it was not fulfilling the entire criteria of appointment. Exhibit W/6 is the details of the breakup of days during the period the workman had worked. This clearly shows that he worked from 1-1-82 to

13-9-84 intermittently. This shows that he never worked 240 days in any year. These all above documents are also admitted by the management. However these documents do not prove that he worked 240 days in twelve calendar months preceding the date of termination to attract the provision of Section 25-B of the Act. This clearly shows that as such there is no violation of the provision of Section 25-F of the Act, 1947.

8. Exhibit W/7 is the application dated 25-11-89 of the workman for selection to the post of peon in the management Bank. Exhibit W/8 is the certificate dated 4-9-84. The workman has admitted his evidence that he had only worked in the Bank as in the Certificate. This certificate does not prove the case of the workman. It shows that he had worked from 1980 to 1984 intermittently. This also shows that he had never worked more than 240 days in any year specially in twelve calendar months preceding the date of termination as required under Section 25 B of the Act, 1947 to count continuous service of one year. Exhibit W/9 is a letter dated 22-8-87 to the workman by the Employment Exchange, Raigarh whereby he was informed that the recruitment was stayed till further order. This is filed to show that he was enrolled in the employment exchange. Exhibit W/9-A is the letter dated 27-1-84 of the Employment Exchaage whereby the workman was informed to appear in the interview for peon before Deputy Director, Agriculture, Raigarh. This is also filed to show that he was enrolled in the Employment Exchange. These documents do also not show that the workman was working continuously and had worked 240 days in twelve calendar months preceding the date of reference. The management has not examined any evidence in the case. Considering the entire evidence, it is clear that there is no violation of the provision of the Act, 1947. This issue is decided against the workman and in favour of the management.

9. Issue No. II

Now the important point for consideration is as to whether the workman was entitled to be absorbed or regularized as permanent employee of the Bank. According to the workman, there was stipulation in the settlement of the Bank that the person who had completed 180 days as on 31-12-89, are entitled to be regularized in the Bank as permanent employee. On the other hand, the management has contended that the agreement only speaks of eligibility criteria as well as procedure to be adopted for recruitment process. The workman was not eligible to be considered for the recruitment process, as he did not comply the required criteria which also includes the registration/ sponsorship for Employment Exchange.

10. It appears from the record that the said agreement/settlement is not filed in the case to determine as to what was the criteria for recruitment in the Bank on the basis of settlement. Though it appears that the management has admitted in his pleading that there is an agreement and the workman was not fulfilling the criteria as he was not registered in the Employment Exchange. The workman has filed documents to prove his case. Exhibit W/7 is the copy of application dated 25-11-89 for appointment on the post of peon in the Bank. This copy of the application shows that the application was received by the Bank. The workman had given the registration No. 8880/84 in the application. The application further shows that the photocopy of the registration card was attached with the application. This shows that the workman was registered in the Employment Exchange bearing his registration No. 8880/84. Exhibit W/5 is the reply dated 20-3-97 given by the management to the Assistant Labour Commissioner (Central), Bilaspur. This document is admitted by the management. Para-5(b) of the reply shows that the workman was rejected on the basis that he was not registered in the Employment Exchange. Thus it is clear from such admission by the management that the workman had applied for appointment on the basis of settlement. The application clearly shows that his registration No. was 8880/84 and copy of the Registration Card was attached with the application. To further substantiate that he was registered in Employment Exchange, the workman filed two letters of the Employment Exchange which are marked as Exhibit W/9 and W/9a. These letters were sent to the workman by book posts on his address. These letters further show that the workman was registered in the Employment Exchange. The above discussion clearly shows that the action of the management was not justified for not considering his candidature who was fulfilling the criteria of the appointment on the basis of settlement. This issue is decided in favour of the workman and against the management.

11. Issue No. III

On the basis of the discussion made above, it is clear that termination of the workman by the management is justified. However the management was not justified for not considering his case for appointment as peon in the Bank on the basis of settlement. Thus the management is directed to consider the case of the workman for appointment as peon on the basis of settlement within two months from the date of award after relaxing the age, if he is overage and pass reasonable order. Accordingly the reference is answered.

12. In the result, the award is passed with cost of Rs. 5000 to be paid to the workman by the management.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 10 जनवरी, 2013

का.आ. 276.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमैन्ट आफ टेलीकमनीकेशन, लखनऊ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 271/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था ।

[सं. एल-40012/17/1990-आई आर (डी यू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th January, 2013

S.O.276 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 271/90) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Department of Telecommunication, Lucknow and their workman, which was received by the Central Government on 6-1-2013.

[No. L-40012/17/1990-IR (D U)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

INDUSTRIAL DISPUTE NO. 271 OF 90

Between:

Vijai Shanker C/o S. N. Tiwari,
119/75-157, Naseemabad,
Kanpur.

And

Department of Telecommunication,
DET (GMC) Kapoorthalabagh,
B-13, Chandra Niwas, Aliganj,
Lucknow.

AWARD

1. Central Government, MoL, New Delhi, vide Notification No. L- 40012/17/90-IR(DU) dated 22-11-90, has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management of department of Telecommunication DET, Lucknow, in terminating the services of Sri Vijai Shanker with effect from 16-10-88 is justified? If not to what relief the concerned workman is entitled to?

3. Brief facts are

4. It is alleged that department of telecommunication is having several branches in the country and one of the branch is situated at Kapoorthala Aliganj Lucknow, under the jurisdiction of this branch the claimant was engaged on daily wages basis on 5-2-88 at EDST (OFC) Sarvodaya Nagar, Kanpur. The opposite party continuously took the work from the workman with effect from 5-2-88 to 15-10-88, thereafter abruptly the opposite party terminated his services on 16-10-88 without issuing any notice etc. and without following the provisions of Section 25F etc. of Industrial Disputes Act, 1947. It is also alleged by him that junior to him viz. Ram Murti Pandey and Ram Kumar Roy have still been retained in service which is in volition of Section 25 of I.D. Act.

5 Therefore he has prayed that he should be reinstated and consequential benefit be provided to him.

6. Opposite party has filed the written statement. It has been alleged that he was engaged as a casual labour from 05-02-88 to 15-10-88 and then discontinued to work as there was no work in that area. It is stated that he has completed only 220 days and not 240 days in a calendar year as per provisions of Section 25F of the Act. Therefore he is not entitled for any relief.

7. Rejoinder has been filed.

8. Both the parties have filed documentary as well as oral evidence.

9. In this case I have passed a detailed order on 06.09.12. The brief of this order is that that the workman has filed an order of the Hon'ble High Court dated 05-04-12 wherein it was ordered, consequently the order dated 03-08-06 is quashed with a direction to the CGIT Kanpur to proceed accordingly and pass an appropriate order in accordance with law for compliance of the award of the year 1991 within a period of three years.

10 Initially the workman insisted for the compliance of the award of the year 1991, but when I inquired and asked from both the parties that the award of the year 1991 has already been set aside and recalled, I showed him the order dated 07-07-95, which is regarding the recalling of the exparte award dated 13-08-91. Thereafter both the parties conceded that accordingly there is no award in existence which could be complied with.

11. Therefore, I have passed the order dated 06-09-12 in sequence to that which is on the file.

12. Thereafter both the parties conceded that a fresh hearing be provided to them. I again granted full opportunities to both the parties regarding production of evidence or otherwise they stated that the evidence is already available on the file.

13. I heard the arguments a fresh.

14. My findings are given below-

15. The short question is that whether the workman has completed 240 days or more in a calendar year according to the mandatory provisions of Section 25F, of I.D. Act.

16. The oral evidence which have been adduced by the parties is statement of workman which have been produced on affidavit and thereafter his cross examination. These are paper no.10/1-2. 11/1-3. There is another statement of the workman which is paper no. 20/1.

17. There is the statement of the opposite party as M.W.1 Sri Subhash Chandra Dubey, Awar Lekha Adhikari.

18. Opposite party has pleaded and MW 1 stated on oath that the claimant was never appointed or engaged against any sanctioned post, therefore, he was never terminated from any sanctioned post. It was contended by the opposite party that he was engaged as casual labour from 05-02-88 to 15-10-88, but he did not work for 240 days completely in a calendar year.

19. Both the parties have filed documentary evidence also. Documentary evidence filed by the claimant is mainly in the nature of photocopies of attendance register etc. Opposite party has also filed payment voucher along with photocopy of attendance register. Therefore it has been found that the claimant was being made payment through payment voucher which has not been denied by the opposite party.

20. The opposite party is stressing that the claimant has completed 220 days only vide schedule paper 62/2 and attendance register paper no.62/3-4 and payment voucher paper no. 23/1-10. Whereas, the claimant stressed on the point that he has completed 245 days as shown in paper a reply filed by the claimant before ALC Kanpur.

21. The Auth. Representative for the opposite party has specifically contended that the claimant had been absent in the month of February on 15th and thereafter he has completed only 26 days in the month of May. He has been absent for the rest of the period. It has also been contended that on 16th February according to the attendance register he had been transferred to other station and there is no payment voucher in respect to that.

22. In this respect I have inspected the payment vouchers also. There is a clear indication that he had worked for 26 days in the month of May. The voucher is paper no.23/5. There is no voucher for the month of Feb.

23. In the cross examination W.W.1 stated that whatever the details of the working period have been given by him before the CGIT, the same was not produced before the ALC.

24. Therefore, I have thoroughly examined oral as well as documentary evidence. It has been found that the claimant was a daily rated casual worker who was not appointed against any regular work. It has been contended by the opposite party the claimant was engaged as per need of the work.

25. From the evidence the claimant has not been able to prove that he has completed 240 days or more in a calendar year before the date of his termination i.e. 16-10-88. Therefore, according to the circumstances and facts of the case the claimant is not entitled for any relief.

26. Reference is answered accordingly against the workman.

RAM PARKASH, Presiding Officer

नई दिल्ली, 10 जनवरी, 2013

का.आ. 277 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिविजनल रेलवे मैनेजर (पी.) झांसी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 53/92) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-1-2013 को प्राप्त हुआ था ।

[सं. एल-41012/105/1991-आई आर (डी यू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 10th January , 2013

S.O. 277 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/92) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the The Divisional Railway

Manager (P) Jhansi and their workman, which was received by the Central Government on 4-1-2013.

[No. L-41012/105/1991-IR (DU)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE DR. R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D.No.53/92

Shri Gopal Singh,
S/o Shri Manohar Lal
Vill. Village Pyare Ka Nagla,
Mauja Mohalla, P.O. Dhanauli,
District Agra (U.P.). .....Workman

Versus

The Divisional Railway Manager, (P)
Central Railway,
Jhansi - 284001. .....Management

AWARD

A casual substitute Khalasi was appointed by Station Superintendent, Central Railway, Agra Cantt, Agra, which office was working under Divisional Railway Manager (P), Central Railway, Jhansi (in short the management), on 12-1-77. He worked with the management at intervals, in case of exigencies. On 29-5-84 he abandoned his duties. Subsequently he raised an industrial dispute before the Conciliation Officer. Since the management contested his claim, conciliation proceedings ended into failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-41012/105/91-IR (DU), New Delhi, dated 16-6-1992, with following terms:—

"Whether the action of the railway administration in terminating the service of Shri Gopal Singh son of Shri Manohar Lal, ex-Khalasi in the establishment of Station Superintendent, Central Railway, Agra Cantt. with effect from 29-5-1984 is justified? If not, to what relief workman is entitled".

2. Claim statement was filed by the said Khalasi, namely, Shri Gopal Singh pleading therein that he was appointed by Station Superintendent, Agra Cantt as Khalasi on 12-1-1977. He worked with the management continuously for a period of seven years. He raised a demand for 'equal pay for equal work' as well as for regularization of his service,. His demand annoyed the management. His services were illegally terminated on 29-5-1984. No notice or pay in lieu thereof was given to him, prior to termination of his service. Retrenchment compensation was also not paid to him.

3. The claimant pleaded that he belongs to Other Backward Class and is physically challenged person. The Apex Court handed down a judgment wherein an employee, who rendered 120 days continuous service with the management, was ordered to be entitled for temporary status and regularization in service. As such he is also entitled for those benefits. His Juniors were retained in service while he was made to go. Principle of "first to come last to go" was not followed. Action of the management is illegal. He is unemployed since the date of termination of his services. He seeks re-instatement in service with continuity and back wages.

4. Claim was demurred by the management pleading that the claimant was engaged as a casual substitute Khalasi. He was not on the rolls of the management. Work was given to the claimant as and when it was available. The claimant did not make himself available for work and there is no dispute which needs adjudication. As per the claim his services were allegedly terminated on 29-5-1984 and he raised dispute before the Conciliation Officer in 1992. This long delay projects that it is a stale claim.

5. Being a casual substitute Khalasi he worked intermittently. In 1984 the claimant applied for appointment against a regular job. He supported his application with a forged educational certificate. During the course of verification forgery came to light. When claimant became aware of that fact, he did not make himself available for work. As such it was the claimant who himself abandoned the job. Under these circumstances there is no case to project that his services were terminated without giving notice or pay in lieu thereof and retrenchment compensation. Claim put forward is liable to be dismissed, being devoid of merits.

6. It would not be out of place to mention that the anagement failed to put in its appearance and file its written statement before the Tribunal. Consequently the management was proceeded ex-parte, vide order dated 29-10-1992, an award was passed by the Tribunal in favour of the claimant, re-instating him in service with full back wages. The award, so passed, was assailed by the management before the High Court of Delhi. Vide order dated 16-7-2012, the award was set aside with an option to the management to file its written statement. In compliance of the said order demurral was made by the management of the claim.

7. On pleadings of the parties following issues were settled: —

(i) Whether delay of 8 years in getting the dispute referred for adjudication would come in way of the claimant to give relief?

(ii) Whether the claimant rendered continuous service as Khalasi for 240 days in preceding 12 months from the date of his termination?

(iii) In terms of reference.

(iv) Relief.

8. Claimant entered the witness box to testify facts Shri N. K. Sinha , Senior Clerk, detailed facts on behalf of the management. No other witness was examined by either of the parties.

9. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Jagjit Singh, authorized representative, advanced arguments on behalf of the management. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

ISSUE No. 1

10. The management agitates that a stale claim was projected by Shri Gopal Singh. He had raised the dispute within a reasonable time in respect on his alleged termination of service, argued Shri Sinha. He wants this Tribunal to discard claim of Shri Gopal Singh, projecting it to be a belated one. For an answer to the proposition, statutory provision of the Industrial Disputes Act, 1947 (in short the Act) would be looked into. Section 10(1) of the Act does not prescribe any.period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub-section (1) of section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay. In Shalimar Works Ltd. [1959 (2) LLJ 26], the Apex Court pointed out that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company [1970 (2) LLJ 256] the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in Mahabir Jute Mills Ltd. [1975 (2) LLJ 326]. In Gurmail Singh [2000 (1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In Prahalad Singh [2000 (2) LLJ 1653], the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. Relying decisions of the Apex Court, High Court of Delhi ruled in Sher Singh [2008 (1) LLJ 161] that delay in seeking remedy in law ousts the petitioner. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

11. As projected by the claimant in his affidavit Ex.WW-1/A he joined service of the management on 12-1-1977. He concedes that he worked for 22 days with the management in May, 1984. When he came to know that certificate submitted by him was forged and fabricated, he stopped attending to his duties. Thus it is evident that the claimant admits that in May, 1984 he attended his duties for the last time. Reference order highlights that an industrial dispute was raised by the claimant before the Conciliation Officer, Lucknow, in 1991. Closure report was sent by the Conciliation Officer to the appropriate Government on 18-11-1991. Consequenlty it is emerging over the record that for more than seven years the claimant has been sleeping and suddenly he came out of slumbers and raised an Industrial dispute. As pointed above law on stale claim is conflicting. However, the claimant admits that he himself stopped attending to his duties in May, 1984. In these circumtances spell of 7 years without any action on the part of the claimant makes his claim stale. I find that the claimant is not justified to agitate his dispute after such a long spell of time. Delay in raising the dispute certainly creates hindrance against the claimant. The issue is, therefore, answered in favour of the management and against the claimant.

ISSUE No. 2

12. Retrenchment of an employee has been subjected to certain pre-conditions, to be complied by the employer, in case the former has rendered continuous service for a period of one year. A workman would be deemed to be in Continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days. "Continuous Service" has been defined by section 25B of the Act. Under sub-section (1) of the said section, "Continuous service for a period" may comprise of two period viz.(i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service." Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be

deemed to in continuous service for that period under an employer if, he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benifit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment.

13.The claimant deposed that he rendered continuous service of a year. He unfolds that he joined services of the management on 12-1-77. He served the management continuously. His service were dispensed with on 29-05-84. Though in his affidavit Ex. WW-1/A claimant projects that he worked continuously with the management for a period of 7 years yet in his cross-examination he concedes that he used to work with the management as and when regular employee used to be on leave. He does not dispute that as and when he worked for 10 days or 20 days or 30 in a month, he was paid for actual days of work. Out of the facts unfolded by the claimant, it becomes evident that he worked intermittently. He admits that attendance cards Ex.WW1/M-2 to Ex.WW1/6 pertain to his attendance with the management. When a glance is made on these cards, it came to light that he worked for 144 days from May, 1984 to 1983, for 86 days from May, 1983 to June, 1982, for 147 days from 1982 to June, 1981, for 89 days from May, 1981 to June, 1980, for 113 days from May, 1980 to June, 1979, for 143days from May, 1979 to June, 1978 and for 182 days from May, 1978 to January 1977. Thus it is evident that the claimant has not rendered 240 days continuous service in any of the calender year, referred above.

14. It is incumbent upon the claimant to lead evidende to show that had in fact worked for 240 days in a year, preceding the date of his termination. Mere filing of an affidavit cannot be regarded as sufficient evidence to his favour. Burden of proof that he has rendered 240 days continuous service in preceding 12 months from the date of his termination lies on the claimant. Law to this effect has been laid in Hadimani (2002 LLR 339), Rajiv Kumar [2003 (SC), L&S 113] Rajasthan State, Ganga Nagar Mills Ltd., [2004 (103) FLR 192], Reserve Bank of India [2005 (5) SCC 100], Batala Co-operative Sugar Mills Ltd., [2005 (8) SCC 25] and Shemal Chandra Bhomik [2006 (1) SCC 337].

15. The claimant failed to discharge the onus to establish that he worked for 240 days in calendar year preceding the date of his termination or in any of the calendar year in which he worked with the management. Resultantly it is concluded that the claimant has not rendered continous service for 240 days as contemplated by the provision of Section 25B of the Act. The issue is, therefore answered in favour of the management and against the claimant.

ISSUE NO. 3

16. In his testimony claimant concedes that he applied for the post of Khalasi for his appointment in regular capacity. It is not disputed that along with his application he submitted certificate projecting himself middle pass. On verification his certificate was found to be forged and fabricated, admits the claimant. He was candid in his admission that when he came to know about that fact, he stopped attending to his duties. Therefore, out of these facts it emerged over the record that the claimant had abandoned his job. No steps were taken by the management to terminate his services. consequently, one cannot say that the management terminated the servics of the claimant which act amounted to retrenchment within the meaning of Section 2 (oo) of the Act. Under these circumstances there was no occasion for the management to terminate his services. No situation would arise to assess justifiability of the action of the management, when it had not terminated services of the claimant at all.

17. Provisions of Section 25F of the Act come into retrenchment of services by the employer. In case of retrenchment when an employee had rendered one year continuous service, as contemplated by the provision of Section 25B of the Act, the employer had to follow the condition enumerated in Section 25F of the Act. When the claimant himself abandoned the job no obligation is caste on the employer to follow preconditions enacted by section 25F of the Act. Procedure of retrenchment as provided in Section 25G or offer of re-employment as enacted by Section 25H of the Act are to be resorted to when there is retrenchment of an employee by the employer. Here in the case, these provisions also do not come into operation. Since no action for terminating the services of the claimant was taken by the Management, the claimant cannot impugn that act. Justifiability of the action of the management has not fallen within the ambit of adjudication. The issue is, accordingly, answered in favour of the management and against the claimant.

Relief

18. Since the claimant had abounded his job apprehending an action against him, he cannot agitate that his services were terminated in an illegal manner. He slept over the matter for long period of 7 years and thereafter raised the dispute thinking that his act of forgery and fabrication has been forgotten. He is not entitled to any

relief. An award is, accordingly passed. It be sent to the appropriate Government for publication.

Dated 26-10-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 278 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम, डिस्ट्रीक्ट इन्जीनियर, शाहजापुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सी जी आई टी/एल सी/आर/43/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था ।

[सं. एल-40012/303/2001-आई आर (डी यू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 278.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/43/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the Telecom District Engineer, Shajapur and their workman, which was received by the Central Government on 6-1-2013.

[No. L-40012/303/2001-IR (D U)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, JABALPUR

No. CGIT/LC/R/43/2002

Presiding Officer: SHRI MOHD. SHAKIR HASAN

Shri Amritlal,

S/o Shri Narsingh,

R/o Vill Satendi,

PO Dendi, Tehsil Shujalpur,

Shajapur Distt. MP .....Workman

Versus

The Telecom District Engineer,
O/D TDE,

Shajapur Distt.

MP .....Management

AWARD

Passed on this 3rd day of December, 2012

1. The Government of India Ministry of Labour vide its Notification No. L- 40012/303/2001-IR (DU) dated 25-2-2002 has referred the following dispute for adjuication by this tribunal:—

"Whether the action of the management of Telecom Distt. Engineer, Shajapur in terminating the services of Shri Amritlal S/o Shri Narsingh w.e.f. July 97 is justified? If not, to what relief the workman is entiled for ?"

2. The counsel for the workman appeared in the case on 11-9-07. Subsequently the workman and his counsel became absent and did not file statement of claim inspite of further notice. Lastly the reference proceeded exparte on 25-1-2010 against the workman.

3. The management appeared and filed Written Statement. The case of the management in short is that the alleged workman was never engaged in any of the sub divisons of the management. The question of termination from services doesnot arise. The provision of Section 25-F of the Industrial Dispute Act, 1947 is not applicable. The question of regularization also does not arise. It is submitted that the alleged workman is not entitled to any relief.

4 The following issues are settled for adjudication-

(i) Whether the action of the management in terminating the workman from services w.e.f. July, 97 is justified?

(ii) To what relief the workman is entitled?

5. **Issue No. I**

The management has examined one witness in the case namely Shri Bhagchand Joshi who is working as SDE legal in the office of TDM Shajapur. He has stated in his evidence that the workman was never engaged by the management as per record. He has stated that the claim of the workman for regularization and termination from services is baseless, fabricated and frivolous. His evidence is unrebutted. There is no reason to disbelieve his evidence. His evidence clearly shows that the alleged workman was never engaged by the management. This issue is

decided against the workman and in favour of the management.

6. **Issue No. II**

On the basis of the discussion made above it is clear that the alleged workman has no case and he is not entitled to any relief. The reference is accordingly answered.

7. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 279 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय जरनल मैनेजर आर्डिनेन्स, फैक्ट्री, इटारसी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सी जी आई टी/एल सी/आर/138/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था ।

[सं. एल-14012/24/2001-आई आर (डी यू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 279 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/138/01) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the The General Manager, Ordnance Factory, Itarsi and their workman, which was received by the Central Government on 6-1-2013.

[No. L-14012/24/2001-IR (DU)]

SUMATI SAKLANI, Section Officer

ANNERURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/138/01

Presiding Officer : SHRI MOHD.SHAKIR HASAN

Shri Santosh Kumar Verma,
Ex-Labour (US),
T.No.1560/ST/01
Qtr.No. 1005, Type-I,
Ordnance Factory Estate, Itarsi,
Distt. Hoshangabad (MP) .....Workman

Versus

General Manager,
Ordnance Factory,
Itarsi .....Management

AWARD

Passed on this 29th day of November, 2012

The Government of India, Ministry of Labour vide its Notification No.L-14012/24/2001-IR(DU) dated 9-7-2001 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of General Manager, Ordnance Factory, Itarsi by removing the services of Shri Santosh Kumar Verma w.e.f. 22-12-99 is justified? If not, to what relief the workman is entitled for?"

2 Reference Case No. CGIT/LC/R/141/2001 was again registered inadvertently on 1-10-2001 out of the same reference order of the Ministry. As such this case is merged in Reference Case No. 138/2001 on 18-3-05.

3 The case of the workman in short is that the workman Shri Santosh Kumar Verma was appointed on the post of Labour(B) in the Ordnance Factory, Itarsi on 22-9-95 on compassionate ground on the death of his father Late Raghunath Prasad who died on 28-1-1995. It is stated that on 24-1-94 there was a quarrel between the families of the workman and one Jagdish Singh Darwan. On false allegation a criminal case bearing no. criminal case No. 34/94 was filed against the workman, his mother and sisters. After trial, the workman and his sisters were convicted and were fined to pay Rs.500 on 16-8-96 by the Learned Judicial Magistrate, First Class, Itarsi. In the meantime, the workman was given employment w.e.f. 22-9-95 . The workman informed the management about the decision of the Learned Judicial Magistrate by filing an application dated 21-8-96. The workman preferred an appeal against the conviction before the Learned Sessions Judge, Hoshangabad. The workman also intimated the management on 24-9-96 about the pendency of the appeal. However he was showcaused by the management vide letter dated 21-9-97 and subsequently was punished by imposing the penalty of reduction in pay to the minimum of the scale vide order dated 13-12-97. The workman did not take any further step and accepted the punishment imposed on him. It is stated that on the alleged same charges the management again issued chargesheet on 17-3-98

for suppression of the fact of the criminal case in the attestation form filled up by the workman at the time of appointment. The workman gave reply and the circumstances of the case and also the punishment imposed on him on 13-12-97 by the Criminal Court. However the departmental enquiry was initiated against the workman and after completion of the enquiry, the enquiry report was submitted by the Enquiry Officer holding him guilty of the charges. The Disciplinary Authority after considering the enquiry report passed the order of dismissal w.e.f. 22-12-99. The appeal was filed but the same was rejected. It is stated that the punishment is harsh excessive and double jeopardy. It is submitted that the order of removal from service be set-aside and the workman be reinstated with all consequential benefits.

4 The management appeared and filed Written Statement. The case of the management, interalia, is that admittedly the workman was appointed on compassionate ground on 22-9- 95 on the death of his father. Before appointment, he was required to fill up the Attestation Form on 31-5-1995 for verification of his character and antecedents. On 29-9-95, the management received an information that the workman was wanted in a criminal case no. 35/41 before the Judicial Magistrate, Itarsi. The management referred the matter to District Magistrate Hoshangabad for verification of his character and antecedent afresh. The District Magistrate, Hoshangabad reported vide letter dated 18-6-97 that he was unfit for a Government employee. He was, therefore, chargesheeted on 17-3-1998 for gross misconduct viz (1) suppression of material information in attestation form and (ii) conduct unbecoming of a Govt. Servant. His reply was found unsatisfactory. The Disciplinary Authority initiated a departmental enquiry. After enquiry, the enquiry report was submitted. The Disciplinary Authority sent a copy of report and showcause proposing the punishment to the workman who gave written submission. After considering the submission, the Disciplinary Authority passed the order of removal from services on 22-12-99. The appeal was filed but the same was rejected. It is stated that earlier the workman was punished for different cause of action. It is submitted that the action of the management is legal, proper and just.

5. On the basis of the pleadings of the parties, the following issues are framed on recast for adjudication:—

I Whether the departmental enquiry conducted against the workman is legal and proper ?

II. Whether the order dated 22-12-94 of punishment of the removal from services to the workman is just and proper ?

III. To what relief the workman is entitled ?

6. **Issue No. I**

This issue is taken up as a preliminary issue. After hearing the parties, this issue is decided on 29-10-2010 and it is held that the departmental proceeding conducted by the management against the workman is legal and proper. Thus this issue is already earlier decided.

7. **Issue No. II**

According to the workman, the order dated 22-12-1999 of removal from the services to the workman was not justified under the circumstances of the case and the impugned order dated 22-12-1999 be setaside and the workman be reinstated. It is stated that earlier the workman was showcaused on 21-1- 97 and subsequently he was punished by imposing the penalty of reduction in pay to the minimum in pay scale vide order dated 13-12-97 . The workman did not protest against the said punishment. Later for the same charges he was again issued chargesheet on 17-3-98 and after departmental enquiry he was imposed a punishment of dismissal from services vide order dated 22-12-1999. It is submitted that subsequent punishment is illegal. Moreover it is submitted that the punishment of removal from services is excessive, harsh and unjust. On the other hand, the management has stated that admittedly the management imposed the penalty on workman by reduction of pay to the minimum of the scale vide order dated 13-12-97 but this penalty is for a separate cause of action whereas the chargesheet on 17-3-98 is for the misconduct committed by the workman for suppressing the vital information about his involvement in criminal offence and subsequent criminal case pending against him while filling up the attestation form which is a distinct cause of action.

8. Before discussing it is essential that what the charges in both the proceedings. The parties have admitted the documents. Exhibit W/5 is the showcause dated 21-1-97 whereby the charges was made against the workman which is reproduced as below-

" Whereas Shri Santosh Kumar Verma, Labourer (US) T.No.1560/Y &E Section, Ordnance Factory, Itarsi has been found guilty of an offence punishable under section 325, 34 of IPC vide judgment dated 16-8-96 passed by the Hon'ble Judicial Magistrate First class, Itarsi Cr.Case No. 35/94.

AND WHEREAS the undersigned considers that the conduct of shri Santosh Kumar Verma Labourer (US) T.No.1560/Y &E Section, OF, Itarsi which has led to his conviction on the criminal charge mentioned in para 1 above is as such as to render him liable for disciplinary action under Rule 19(1) of CCS (CCA) Rules 1965.

NOW, THEREFORE, the undersigned hereby gives an opportunity to the said Shri Santosh Kumar Verma, Labourer (US) T.No.1560/Y &E Section, Ordnance Factory, Itarsi for a personal hearing. The said Shri Santosh Kumar is accordingly hereby directed to appear before the undersigned on 22-1-1997 at 15.00 hours.

This charge clearly shows that the proceeding was conducted as penalty was imposed on him on the ground of conduct which had led to his conviction in a criminal charge whereas the dismissal from service vide order dated 22-12-1999 is based on the chargesheet dated 17-3-98. The workman has filed the said chargesheet which is admitted by the management and is marked as Exhibit W1/2. The said charge is reproduced as below:—

"Annexure-I"

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI SANTOSH KUMAR VERMA, LAB. (US), T.No.1560/LB/01, LB SECTION, ORDNANCE FACTORY ITARSI.

"That the said Shri Santosh Kumar Verma, Lab (US), T.No. 1560/LB/01, LB Section, Ordnance Factory, Itarsi committed Gross Misconducts viz (i) Suppression of material information in Attestation Form and (ii) Conduct unbecoming of a Government Servant".

This charge clearly shows that the proceeding was initiated as false information was furnished by the workman in Attestation form before his appointment. It appears that the charges of both the proceedings are distinct and it cannot be said as double jeopardy.

9. Now the important question is as to whether the punishment imposed on the workman is excessive and harsh or is justified. It is not out of place to say that the following facts are admitted by the parties.

1. The workman Shri Santosh Kumar Verma was appointed on the post of Labour (B) in the Ordnance Factory, Itarsi on 22-9-95 on compassionate ground on the death of his father.

2. Before appointment, he was wanted in a criminal case bearing no. 35/41 under Section 325/34-I.P.C pending before the Learned Judicial Magistrate, Itarsi.

3. He filled up Attestation Form on 31-5-1995 for verification of his character and antecedents in compliance of selection of his appointment on compassionate ground and answered it in negative.

4. Subsequently he was convicted on 16-8-96 by the criminal court and was taken into custody till the rising of the court with fine of Rs.500.

5. The workman informed the management by filing an application dated 21-8-96 about the decision of the learned Judicial Magistrate. The workman also informed the management on 24-9-96 about the pendency of appeal against the conviction order before the learned Sessions Judge, Hoshangabad and the order of conviction was stayed by the Appellate court.

6. On information of criminal case to the management, the competent authority issued show cause vide letter dated 21- 1-97 for misconduct which led to his conviction in criminal charge.

7. Subsequently he was punished by the management by imposing the penalty of reduction in pay to the minimum of the scale vide order dated 13-12-97.

8. Again a chargesheet was issued on 17-3-98 against him by the management for suppression of fact of the criminal case in the Attestation form filled by him.

9. After departmental enquiry, he was dismissed from services w.e.f. 22-12-1999 by the Disciplinary Authority.

10. It is evident that most of the facts are admitted by the parties. The workman had admittedly furnished false statement in Attestation Form(Exhibit M-10) that he was not prosecuted in any criminal case prior to taken him in employment on 22-9-95. The learned counsel for the management has argued that it was clearly indicated in the Attestation form that the furnishing of false information or suppression of any factual information in the

Attestation Form would be a disqualification and is likely to render the candidate unfit for employment under the Government and his service would be liable to be terminated. The learned counsel for the management has referred a decision reported in (2003) 3. S.C.C. Kendriya Vidyalaya Sangathan and ors. Versus Ram Ratan Yadav wherein the Hon'ble Supreme Court has held that the purpose of seeking information was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information was sought with a view to judge the character and antecedents of the respondent to continue in service or not. Lastly the Hon'ble Supreme Court upheld the termination. The management has also cited a decision report in 1996 MPLJ 580, Rajender Kumar Patel Vrs. Union of India and others. It is submitted that in this case also the Hon'ble High Court has justified the termination.

11. The learned counsel for the workman has submitted that the workman was admittedly appointed on compassionate ground on the death of his father who was chargeman Grade II with the management. It is submitted that the criminal case was lodged out of family dispute with the neighbours and there was no criminal history of the workman. He was hardly 19 years at the time of entry into the service of the management. Moreover he has already punished by the management by imposing the penalty of reduction in pay to the minimum of the scale vide order dated 13-12-97 for misconduct which led his conviction though the Appeal is pending against the conviction and conviction order is stayed by the learned Sessions Judge, Hoshangabad. The learned counsel for the workman has relied the decision of double bench of the Hon'ble Supreme Court report in 2011 LAB.I.C.2862 Commission of Police and ors vrs. Sandeep Kumar wherein the Hon'ble Apex Court has held at-

"Para-12 —

We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter.

Para-13-

When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather that to brand them as criminals for the rest of their lives.

Para-17-

In our opinion, we should display the same wisdom as displayed by Lord Denning.

Para-18-

As already observed above, youth of ten commit indiscretions, which are often condoned.

Para-19-

It is true that in the application form, the respondent did not mention that he was involved in a criminal case under section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified.

Para-20-

At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter."

It appears that the circumstances of the case is similar. Moreover the father died and he was getting employment on compassionate ground. He is also punished by the management for his conviction in criminal case. As such I find that this decision of the Hon'ble Apex Court is applicable in this case. The learned counsel for the workman has also filed order dated 21-8-2012 passed in W.P.No. 8884/12 Rakesh Kumar Patel Vrs. Union of India & others wherein the Hon'ble High Court has also discussed the case of Commissioner of Police (Supra). In view of the decision of the double bench of the Hon'ble Apex Court, I find that the penalty imposed on the workman vide order dated 22-12- 99 of removal from services is excessive and harsh and is not justified and is fit to be set aside. This issue is decided in favour of the workman and against the management.

12. Issue No. III

On the basis of the discussion made above, it is clear that the action of the management is not justified in removing the workman from service vide order dt. 22-12-99 and therefore it is set aside . Since the workman was punished by imposing the penalty of reduction in pay vide order dated 13-12-97. As such further punishment appears to be excessive and harsh and the management is directed to reinstate the workman without back wages.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 280 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जरनल मैनेजर, टेलीकॉम फैक्टरी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. सी.जी.आई.टी./एल.सी./आर/89/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-01-2013 को प्राप्त हुआ था ।

[सं. एल-40012/22/1995-आई आर (डी.यू.)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 280 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/89/96) of the Central Government Industrial Tribunal-cum-Labour Court, Jablapur as shown in the Annexure, in the Industrial Dispute between the Chief General Manager, Telecom Factory and their workman, which was received by the Central Government on 06-01-2013.

[No. L-40012/22/1995-IR (DU)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO: CGIT/LC/R/89/96

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

Shri Mohd. Yunus,
Qr. No. 65,
Near Badi Mazjid,
Andherdeo,
Prince Street,
Jabalpur ... Workman

Versus

Chief General Manager,
Telecom Factory,
Jabalpur ... Management

AWARD

Passed on this 11th day of December, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-40012/22/95-IR(DU) dated 27-3-1996 has referred the following dispute for adjudication by this tribunal:—

> "Whether the action of the management of Telecom Factory, Jabalpur in terminating the services of Shri Mohd. Yunus working in yard shop is legal and justified? If not, what relief the concerned workman is entitled for?"

2. The case of the workman in short is that the workman Shri Mohammad Yunus was working as Mazdoor with the management. He was charge sheeted for misconduct. The Disciplinary Authority initiated a proceeding against him. The Enquiry Officer was appointed. After enquiry, the Enquiry Officer submitted his enquiry report. The Disciplinary Authority has not applied his mind before passing the order of dismissal from services. It is stated that the finding of the Enquiry Officer is perverse. He was also biased against the workman. The workman died during the pendency of the reference proceeding on 29-7-2011 and his legal heirs are substituted in his place. It is submitted that the order of punishment be set aside and the management be directed to pay all retrospective monetary benefits to the legal heirs.

3. The management appeared and filed Written Statement. The case of the management, interalia, is that the workman was working as a Mazdoor in the yard shop. On 7-6-90 while he was leaving the factory at about 2.40 PM through Gate No. 2, he was stopped by the Security Staff Shri Sitaram. He became annoyed and abused him. On being checked, he assaulted the said security guard. He was served with a memo dated 29-6-90 of the alleged misconduct. The workman denied the charges. The Disciplinary Authority initiated a proceeding and appointed an Enquiry Officer. The workman was given opportunity to defend himself. Lastly the Enquiry Officer submitted his report dated 31-5-1994. The Disciplinary Authority after considering the evidence brought on the record came to the conclusion that the charges stood proved against the workman and imposed the penalty of removal from services vide order dated 27-9-94. It is submitted that the reference be answered in favour of the management.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

I Whether the departmental enquiry conducted by the management against the workman is legal and proper?

II. Whether the management is entitled to prove the misconduct of the workman? If so, whether the management is able to prove the misconduct against the workman?

III. Whether the punishment imposed on the workman by the management is proper and justified?

IV. To what relief the workman is entitled?

5. Issue No. I

This issue is taken up as a preliminary issue. After hearing both the parties and after considering the record

and evidence adduced in the case, it is held that the departmental enquiry conducted by the management against the workman is not legal and proper vide order dated 30-3-2012. The management has not challenged the said order in any Court of law and the said order has reached to its finality. Thus this issue is already earlier decided.

6. Issue No. II

The opportunity is given to the management to prove misconduct before the Tribunal vide order dated 30-3-2012. Now the important question is as to whether the management is able to prove misconduct against the workman before the Tribunal? According to the workman, he had not committed any misconduct and denied all charges whereas the management contended that on 7-6-90 at about 2.40 PM, the workman abused the Security Guard Shri Sitaram and on checking the workman assaulted him, as such he was charge-sheeted.

7. The burden is on the management to prove misconduct against the workman. It appears that the opportunity is given to the management to adduce oral and documentary evidence but the management has failed to adduce any evidence before the Tribunal. Lastly the evidence of the management is closed on 16-10-2012. There is no evidence on the point of misconduct against the workman. This shows that the management has failed to prove misconduct against the workman before the Tribunal.

8. Another point is raised by the learned counsel for the management that admittedly the workman Shri Mohd. Yunus died on 29-7-2011 during the pendency of the reference case. The departmental enquiry is held not proper and legal vide order dated 30-3-2012. The said order has already reached to its finality. This is clear that the charge of misconduct is not said to have been proved during the life time of the workman and after his death the management is not entitled to prove misconduct in the proceeding. Bahri's Hand Book 2001 for Central Government Employees, 5th Edition Page 336 shows that it is provided that where a Government employee dies during the pendency of the enquiry i.e. without charges being proved against him , imposition of any of the penalties prescribed under CCS (CCA)Rules 1965 would not be justifiable. Therefore the disciplinary proceeding should be closed immediately on the death of the alleged Government employee vide Deptt. of Personnel and Training. O.M. No. 11012/7/99-Estt. (A) dated 20-10-1999. Thus it is clear that since the workman died during the pendency of the proceeding and the misconduct is not yet proved which appears to be personal liability, as such the management is now not entitled to prove misconduct on the death of the workman. Thus this issue is decided in favour of the workman and against the management.

9. Issue No. III

On the basis of the discussion made above, it is clear that the management has failed to prove misconduct against the workman. Moreover on the death of the workman on 29-7-2011 during the pendency of the proceeding, the management is also now not entitled to prove misconduct in view of the circular of the Deptt. of Personnel and Training O.M. No. 11012/7/99-Estt 7 (A) dated 20-10-1999 and the disciplinary proceeding shall be closed. This shows that since the charges are not prove, the punishment of removal from service of the workman vide order dated 27-9-94 is not legal and justified and is hereby set aside. This issue is decided in favour of the workman and against the management.

10. Issue No. IV

It is evident from the discussion made above that the management is not justified in removing the workman from service. The workman is now dead and therefore the management is directed to pay his full wages till the date of retirement of the workman or till his death, whichever is earlier, to his legal heirs. Thereafter the management is further directed to pay all retirement benefits in accordance with law in the manner, as if the workman was not removed from service within two months from the date of award. Accordingly the reference is answered.

11. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 11 जनवरी, 2013

का.आ. 281 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डॉयरेक्टर, सैन्सस ऑप्रेशनस, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 18/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-01-2013 को प्राप्त हुआ था ।

[सं. एल-42012/78/1998-आई आर (डी.यू.)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 281 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2002) of Industrial Tribunal, Kota as shown in the Annexure, in the Industrial Dispute between The Director, Census Operations,

Jaipurand their workman, which was received by the Central Government on 06-01-2013.

[No. L-42012/78/1998-IR (DU)]

SUMATI SAKLANI, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा, राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.
निर्देश/प्रकरण क्रमांक औ.न्या./केन्द्रीय/-18/2002
दिनांक स्थापित : 10/5/2002

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/78/98-आईआर/डीयू/दिनांक 10-4-2002

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

अरविन्द पालीवाल पुत्र रामावतार पालीवाल, लक्ष्मण निवास, झाला हाउस के सामने, श्रीपुरा, कोटा ।

--प्रार्थी श्रमिक

एवं

डॉयरेक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूँगरी, जयपुर ।

--अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री एस.एल. भोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री श्याम गुप्ता

अधिनिर्णय दिनांक : 21/11/2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय नई दिल्ली के प्रासंगिक आदेश दि. 10-4-2002 के द्वारा निम्न निर्देश/विवाद औद्योगिक विवाद अधिनियम, 1947 (जिसे तुदपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:—

> "Whether the action of the Census Department through Director of Census Operation Rajasthan, Jaipur in discountinuing the services of Sh. Arvind Paliwal S/o Sh. Ramawater paliwal, Kota w.e.f. 30-6-92 is legal and justified? If not, to what relief the workman is entitled and from what date?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत अवगत करवाया गया ।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं. औ.न्या./केन्द्रीय/-18/2002 का निस्तारण किया जा रहा है । हालाँकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्राय: समान रूप से आयी है एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की है, अत: सभी प्रकरणों का हालाँकि अलग-अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्राय: समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है ।

4. इस प्रकरण में प्रार्थी ने अपने आपको कम्पायलर बताया है एवं उसने अपनी नियुक्ति तिथि 15-7-91 एवं हटाने की तिथि 30-6-92 बतायी है । प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है । विशेष रूप से यहाँ यह उल्लेख करना भी समीचीन होगा कि प्राय: सभी प्रकरणों में दलीलें व साक्ष्य भी जिस रूप में आयी है उसमें बहस के दौरान पक्षकारों के विद्वान प्रतिनिधिगण ने यह अभिकथन किया कि चूँकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजों एक जैसी ही है, अत: किसी भी एक प्रकरण की दस्तावेजी साक्ष्य जिसमें कि उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे । अत: इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है ।

5. प्रार्थी ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक 15-7-91 से कम्पलाईर के पद पर सेवा में नियोजित किया गया । नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया । बाद में सहायक निदेशक, जनगणना, कोटा कार्यालय समाप्त हो गया एवं उसका कार्य निदेशक, जनगणना, राजस्थान जयपुर द्वारा किया जा रहा है । यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं । इस कार्य के लिए कर्मकारों की नियुक्ति पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा जारी की जाती है जिसमें प्रार्थी श्रमिक के कम्पालाईर के पद की स्वीकृति भी दिनांक 21-12-93 तक जारी की गयी थी । प्रार्थी श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थी के पद की स्वीकृति भी महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थी को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थी कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयी । इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखिक रूप से सेवा समाप्त की गयी । प्रार्थी की सेवा समाप्ति छंटनी की तारीफ में आता है एवं सेवा समाप्ति से पहले प्रार्थी की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के

आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्यदिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी । प्रार्थी की सेवायें दिनांक 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफजीएच्च की पालना नहीं करना विधिसम्मत नहीं है । प्रार्थी द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिटयाचिका संख्या 4295/92 प्रस्तुत की गयी जो दिनांक 9-5-97 को निर्णित की गयी एवं प्रार्थी को समझौता अधिकारी के यहाँ कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहाँ वार्ता असफल हुई । फिर प्रार्थी ने पुनः एक रिटयाचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अतः प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके कम्पलाईर चैकर पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले समस्त वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ की समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दिनांक 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृति किये गये एवं पदों को बाद में तार दिनांक 4-3-92 के द्वारा जून, 92 तक जारी रखने की स्वीकृति प्रदान की गयी । अतः प्रार्थी का यह कथन असत्य है कि इसकी नियुक्ति मौखिक रूप से की गयी, अपितु इन पद हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी की नियुक्ति कम्पलायर के पद पर की गयी थी । प्रार्थी का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी थी । सभी क्षेत्रीय सारणीयन-कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थी को सेवा से पृथक कर दिया गया था । प्रार्थी को अनुबन्ध में वर्णित समेकित वेतन रु. 900 प्रतिमाह पर अनुबन्धित किया गया था वे उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अतः मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि कम्पलाईर के पद तो 30-6-92 तक ही उपलब्ध थे । चूँकि प्रार्थी अनुबन्ध के आधार पर अनुबन्धित था, अतः वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय, राज. जयपुर-प्रकरण सं. औ.न्या./केन्द्रीय/21/99" के मामले के दिये गये निर्णय से भी स्पष्ट है । इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थी के क्लेम स्टेटमेन्ट को खारिज किये जाने की प्रार्थना की है ।

7. इसके पश्चात साक्ष्य प्रार्थी में प्रार्थी श्रमिक अरविन्द पालीवाल का शपथ-पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी.शर्मा का शपथ-पत्र पेश हुआ, प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक, जनगणना, नई दिल्ली के आदेश दिनांक 30-11-93 की प्रति, रेफ्रेन्स की प्रति, उभयपक्ष के मध्य निष्पादित संविदा-प्रपत्र, महापंजीयक कार्यालय से जारी तार की फोटोप्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीय कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों की संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालांकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूँकि सभी के लिए यह सामग्री आधारभूत है, अतः सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्धान प्रतिनिधि ने दलील दी कि प्रार्थी की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थी । प्रार्थी ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । जनगणना अधिनियम की धारा 4, 11 एवं 18 को उन्होंने उदृत किया । धारा 4 में जनगणना कार्य के लिए किनको नियुक्त किया जायेगा व किस प्रकार से पर्यवेक्षण किया जायेगा, इसका उपबन्ध है । धारा 11 में जनगणना कार्य की सूचना को हटाने या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है । आगे इसी अधिनियम में कम्पलाईर के पद का उल्लेख हुआ है । उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उदृत किया गया है । जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है । इस मामले में अनुबन्ध में जहाँ एक ओर प्रार्थी ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अतः ऐसा अनुबन्ध विधिसम्मत नहीं कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधान लागू भी नहीं होते हैं । प्रार्थी को तो रोजगार चाहिए था, अतः जहाँ पर भी अप्रार्थी ने हस्ताक्षर करवाये, वहां उसने हस्ताक्षर कर दिये । प्रार्थी का पद 30-11-93 तक उपलब्ध होने के

बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थी ने 240 दिन से ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अत: इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थी का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :-

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू.एल.सी./राज./पृष्ठ 340-इस न्यायनिर्णय में जनगणना विभाग में नियुक्त कर्मकारों की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये ।

(2) अनूप शर्मा बनाम अधिशासी अभियन्ता, पी.एच.डी. खण्ड । पानीपत/हरियाणा-2010(2)आर.एल.डब्ल्यू 1586 (एस.सी.)-इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया ।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम-2010 सीडीआर 401 (एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहाँ नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नहीं है ।

(4) कमिश्नर केन्द्रीय विद्यालय संघठन एवं अन्य बनाम अनिल कुमार सिंह व अन्य-(2003)10 एस.सी.सी.284-इस मामले में प्रतिपादित किया गया कि जहाँ संविदात्मक नियुक्ति हुई है तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक की सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भरती तक उसकी सेवायें रखी जानी चाहिए थीं, अत: इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी ।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य-2008 डब्ल्यू. एल.सी.(राज.) यू.सी. पृष्ठ 730-इस मामले में अंशकालीन कर्मकार को भी धारा 25-एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया ।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में नियुक्ति तथा समाप्ति दोनों ही अप्रार्थी द्वारा मौखिक रूप से बतायी है वह सर्वथा असत्य है, अपितु प्रार्थी की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह लिखित अनुबन्ध स्वयं प्रार्थी के द्वारा हस्ताक्षरित है एवं ऐसे अनुबन्ध पर प्रार्थी ने अपने हस्ताक्षर होना भी स्वीकार किया है । अत: अब प्रार्थी उस अनुबन्ध से परे जाकर यदि कोई कथन करता है तो वह कोई महत्व नहीं रखता है । प्रार्थी ने अनुबन्ध के तथ्यों को ही छिपा दिया है । प्रार्थी ने यह विवाद भी करीबन 10-11 वर्ष की देरी से उठाया है । इसके अलावा जनगणना का कार्य तो जनगणना का कार्य तो भारत सरकार द्वारा प्रति 10 वर्ष में एक बार कराया जाता है एवं उसमें महापंजीयक, जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों की जितने समय के लिए आवश्यकता होती है, वही स्वीकृति जारी होती है एवं उस स्वीकृति के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं । प्रार्थी को भी संविदा के आधार पर रखा गया था । औ.वि.अधिनियम की धारा 2(oo)(बीबी) में जहां किसी कर्मकार की संविदा के अनविनिकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता । अत: इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थी की छंटनी नहीं की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वत: समाप्त हो गयी थी । इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात जारी नहीं रखने का स्वयं जनगणना निदेशक का तार दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय सारणीयन कार्यालय जून, 92 तक ही काम कर पायेगें एवं इसी अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया । अत: जब प्रार्थी का ना तो कोई कार्य शेष रहा एवं ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता । इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहाँ पर कोई औद्योगिक एवं व्यवसायिक गतिविधियां संचालित नहीं होती है, यह राज्य का एक सार्वभौमिक कर्तव्य है । प्रार्थी स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अत: प्रार्थी का क्लेम स्टेटमेन्ट खारिज किया जावे । पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण खारिज किये जा चुके हैं । उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उद्धृत किये गये हैं :

"(1) 1996 लेब.आई.सी. पृष्ठ 915 (एस.सी.)-सुल्तान सिंह बनाम हरियाणा राज्य- इस मामले में जहां राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने से इन्कार कर दिया तो माननीय उच्चतम न्यायालय द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया ।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोजीकोड एवं अन्य-2006 लेब.आई.सी. 649 (केरला उ. न्या.) इस मामले में यह प्रतिपादित किया गया कि जहां संविदा के नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य-आर.एल.डब्ल्यू. 2003 (1) राज. पृष्ठ 171 इस न्यायनिर्णय में प्रतिपादित किया गया कि जहां कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त

होने के पश्चात सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बांसवाड़ा-2001 (3)राज. पृष्ठ 1465-इस मामले में भी जहां अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेश कुमार के. भट्ट-2000 लेब.आई.सी. 818 (गुजरात उ. न्या.)- इस मामले में प्रतिपादित किया गया कि जहां किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटका-2003 (97) एफ.एल.आर. 608-इस मामले में प्रतिपादित किया गया कि जहां किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के.आर. हेमावेत्ती-2000 लेब. आई.सी. 3745 (कर्नाटक उ.न्या.)-इस मामले में यह प्रतिपादित किया गया कि जहां अस्थायी नियुक्ति संविदा के अधीन निश्चित अवधि के लिए हुई है तो 240 दिन से ज्यादा काम करने पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नहीं आता ।''

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों पर मनन किया ।

11. जहां तक प्रार्थी की ओर से प्रस्तुत ''सावित्री विजय'' के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भरती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया ? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया । अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्रार्थी/प्रार्थीया को कम्पायलर/चेकर/आकस्मिक श्रमिक/दैनिक वेतन भोगी श्रमिक के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अत: ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध-पत्र भरवाया गया मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर कर दिये । इस सम्बन्ध में न्यायाधिकरण का इतना ही कहना पर्याप्त है कि जहां एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रप्राप्ता व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मंजूर नहीं थी तो । अत: अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नहीं पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती है एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के सम्बन्ध में स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आयेंगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहां कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स (अन्तर्वस्तु) के सम्बन्ध में कोई मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अत: प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया इस सम्बन्ध में अप्रार्थी की ओर से महापंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय, राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का आदेश दिया गया एवं उसी तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयी तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त कर दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नहीं थी एवं यह कार्य ना केवल राजस्थान अपितु पूरे भारत वर्ष में किया गया, अत: इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णय ''प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स/प्रा. लि. कालीकट बनाम श्रम न्यायलय, कोजीकोड'' का उद्धृत किया गया है एवं अन्य न्यायनिर्णय ''श्यामलाल सोनी बनाम जेडीए, अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बांसवाड़ा अभियन्ता,भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट'' जो उद्धृत किये गये हैं, इन सभी में यह स्पष्ट

रूप से प्रतिपादित किया गया है कि जहां कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित अवधि समाप्त होने के फलस्वरूप यदि सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे में धारा 25-एफ अधिनियम की पालना किया जाना अपेक्षित नहीं है । हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई हैं तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायनिर्णय "सेक्रेट्री, स्टेट आफ कर्नाटका एवं अन्य बनाम उमादेवी एवं अन्य-(2006) 4 एस.सी.सी. पृष्ठ 1" का भी महत्वपूर्ण है । इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार हैं :-

"Service Law- Casual Labour/Temporary Employee- Status and rights of- Unequal bargaining power- Effect- Held, such employees do not have any right to regular or permanent public employment- Further, temporary, contractual, casual, ad-hoc or daily-wage pubic employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it- Reasons for, discussed in detail- Labour Law."

"Phenonmenon of "litigious employment" which had arisen due to issuance of such directions by High Courts, and even Supreme Court, highlighted- Held, merely because an employee had continued under cover of an order of the court, under "litigious employment" or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules- It is further not open to the court to prevent regular recruitment at the instance of such employees- Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायनिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार है :-

"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, "the judicial process would become another mode of recruitment dehors the rules."

इसी न्यायनिर्णय में आगे पेरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार है :-

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain- not at arm's length- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temoporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the

Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

15. इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डबल्यू. 2002(4) राज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायालय ने यह प्रतिपादित किया कि जहां कर्मकार की अनुबंध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबंध का नवीनीकरण नहीं करने पर एवं अनुबंध की अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2(00) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह वर्णित है कि जहाँ वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नहीं माना जा सकता ।

17. अत: उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहाँ संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उद्दृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियाँ इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती है ।

18. इसके अलावा "मोह. राजमोहम्मद बनाम औ.न्या. एवं श्रम न्यायालय, वारंगल एवं अन्य-2003(2) एल.एल.जे. पृष्ठ 1149" के मामले में माननीय आन्ध्र प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है:-

"The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely severeign functions and welfare of the entire natation depends on the informtion collected, tabulated and prepared by the sadepartment. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तर प्रदेश राज्य एवं अन्य 2011(130) एफ.एल.आर. (इला.उ.न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्च न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लग कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

"Appointment- Under the National Leprosy Eradication Programme launched by Central Government Non-extention of scheme- work refused- Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department Approach to State Government- Absorption refused-Legality of-Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible- No interference warranted-Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धांतों की विधिक स्थिति आदि के विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा के अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्रार्थी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती हैं एवं माननीय आन्ध्र प्रदेश उच्च न्यायालय ने तो ऊपर उद्दृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(00) के अपवाद (बीबी) के तहत जहाँ सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती हैं तो उसे छंटनी की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है । प्रार्थी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्वीकार किया है । अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं । अब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है । इसके अलावा प्रार्थी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है । प्रार्थी की सेवायें अप्रार्थी द्वारा मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे भारत वर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है । यह प्रार्थी व अन्य प्रार्थीगण में से कोई यदि भरती की नियमित प्रक्रिया से गुजरे तो वे उस भरती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु सीमा से भी काफी ऊपर की आयु सीमा तक पहुँच चुके थे । अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार यही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30-6-92 को अप्रार्थी द्वारा की गयी है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश क्रमांक ए-42012/78/2002-आईआर(डीयू) दिनांक 10-4-2002 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थी अरविन्द पालीवाल की जो सेवायें समाप्त की गयी है, वह अनुबन्ध के तहत ही की गयी है एवं ऐसे में उनका यह कृत्य उचित एवं वैद्य था । अत: प्रार्थी अरविन्द पालीवाल किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 11 जनवरी, 2013

का.आ. 282.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाइरेक्टर, सैन्स आपरेशन, जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोटा के पंचाट (संदर्भ संख्या 20/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था ।

[सं. एल-42012/70/1998-आईआर (डीयू)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 282.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2002) of Industrial Tribunal, Kota as shown in the Annexure, in the Industrial Dispute between the The Director, Census Operations, Jaipur and their workman, which was received by the Central Government on 6-1-2013.

[No. L-42012/70/1998-IR (DU)]
SUMATI SAKLANI, Section Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राजस्थान

पीठासीन अधिकारी: श्री प्रकाश चन्द्र पगारीया, आर.एच.जे.एस.
निर्देश प्रकरण क्रमांक औ.न्या./केन्द्रीय/20/2002
दिनांक स्थापित : 10-5-2002

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश क्रमांक एल-42012/70/98-आई.आर./डीयू/दिनांक 10-4-2002 निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

मध्य

ओम प्रकाश पुत्र जगन्नाथ खण्डेलवाल, निवासी 1-सी-18, हाउसिंग कोलोनी, तलवण्डी, कोटा

—प्रार्थी श्रमिक

एवं

डॉयरेक्टर, सेन्सस ऑपरेशन, 6-बी झालाना डूँगरी, जयपुर

- अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि :— श्री एस.एल.सोनगरा

अप्रार्थी नियोजक की ओर से प्रतिनिधि:— श्री श्याम गुप्ता

अधिनिर्णय दिनांक : 21-11-2012

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय नई दिल्ली के प्रासंगिक आदेश दि. 10-4-2002 के द्वारा निम्न निर्देश/विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

> "Whether the action of the Census Department through Director of Census Operation Rajasthan, Jaipur in discontinuing the services of Sh. Om Prakash S/o Sh. Jagnnath Khandelwal w.e.f. 30-6-1992 is legal and justified? If not, to what relief the workman is entitled and from what date ?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को नोटिस/सूचना जारी का विधिवत् अवगत करवाया गया ।

3. इस अधिनिर्णय से इस न्यायाधिकरण में ऊपर वर्णित प्रकरण सं. औ.न्या./केन्द्रीय/22/2002 का निस्तारण किया जा रहा है । हालाँकि इसी प्रकार के अन्य और प्रकरण भी इस न्यायाधिकरण में लम्बित हैं एवं उन प्रकरणों में भी अप्रार्थी जो इस प्रकरण में है, वही है तथा उन प्रकरणों के तथ्य भी इस प्रकरण के तथ्यों से मिलते-जुलते हैं, साक्ष्य भी प्रायः समान रूप से आयी है एवं बहस भी पक्षकारों ने सभी प्रकरणों को समेकित करते हुए ही की है, अतः सभी प्रकरणों का हालाँकि अलग अलग रूप से निस्तारण किया जा रहा है परन्तु प्रकरणों के तथ्य, पक्षकारों की साक्ष्य एवं दी गयी दलीलों आदि को देखते हुए सभी में विवेचन प्रायः समान ही है एवं उसी अनुरूप इस प्रकरण के अलावा अन्य कुल 12 प्रकरण हैं, उनका भी आज ही निस्तारण किया जा रहा है ।

4. इस प्रकरण में प्रार्थी ने अपने आपको कम्पायलर/चेकर बताया है एवं उसने अपनी नियुक्ति तिथि 3-6-1991 एवं हटाने की तिथि 30-6-92 बतायी है । प्रार्थी ने सेवा में नियोजन व समाप्ति, दोनों ही अप्रार्थी द्वारा मौखिक रूप से किया जाना बताया है । विशेष रूप से यहाँ यह उल्लेख करना भी समीचीन होगा कि प्रायः सभी प्रकरणों में दलीलें व साक्ष्य भी जिस रूप में आयी है उसमें बहस के दौरान पक्षकारों के विद्वान प्रतिनिधिगण ने यह अभिकथन किया कि चूँकि सभी प्रकरणों में साक्ष्य मौखिक व दस्तावेजी एक जैसी ही है, अतः किसी भी एक प्रकरण की दस्तावेजी साक्ष्य जिसमें कि उभयपक्ष द्वारा पेशशुदा सभी दस्तावेज प्रदर्शित हुए हैं, उसको इस प्रकरण के विनिश्चय के लिए आधारभूत माना जावे । अतः इस अभिकथन को दृष्टिगत रखते हुए प्रकरण में उभयपक्ष की सभी प्रकरण में आयी हुई दस्तावेजी साक्ष्य को समेकित करते हुए मौखिक साक्ष्य के आलोक में उसका विवेचन व विश्लेषण कर विनिश्चय का आधार माना जा रहा है ।

5. प्रार्थी ने अपने क्लेम स्टेटमेन्ट में वर्णित किया कि उसे अप्रार्थी विभाग द्वारा दिनांक 3-6-1991 से कम्पलाईर/चेकर के पद पर सेवा में नियोजित किया गया । नियुक्ति आदेश मौखिक था, लिखित में कोई आदेश नहीं दिया गया । बाद में सहायक निदेशक,

जनगणना, कोटा कार्यालय समाप्त हो गया एवं उसका कार्य निदेशक जनगणना, राजस्थान जयपुर द्वारा किया जा रहा है । यह कार्य भारत सरकार के गृह मंत्रालय द्वारा महापंजीयक के तहत करवाया जाता है जिसमें जिला स्तर पर सहायक निदेशक व राज्य स्तर पर निदेशक जनगणना का कार्य करते हैं । इस कार्य के लिए कर्मकारों की नियुक्ति, पदों की स्वीकृति महापंजीयक, जनगणना, भारत सरकार, नई दिल्ली द्वारा जारी की जाती है जिसमें प्रार्थी श्रमिक के कम्पायलर के पद की स्वीकृति भी दिनांक 21-12-93 तक जारी की गयी थी । प्रार्थी श्रमिक ने अपनी नियुक्ति तिथि से 30-6-92 तक लगातार 240 दिन से अधिक समय तक कार्य किया है एवं प्रार्थी के पद की स्वीकृति भी महापंजीयक, जनगणना, नई दिल्ली द्वारा 30-11-93 तक बढ़ा दी गयी थी परन्तु इसके बावजूद भी प्रार्थी को 1-7-92 से कार्य पर आने से मना कर दिया एवं 1-7-92 को जब प्रार्थी कार्य पर गया तो उसकी सेवायें समाप्त कर दी गयी । इस सम्बन्ध में उसे कोई लिखित आदेश नहीं दिया गया, मौखित रूप से सेवा समाप्त की गयी । प्रार्थी की सेवा समाप्ति छंटनी की तारीख में आता है एवं सेवा समाप्ति से पहले प्रार्थी की वरिष्ठता सूची का कोई प्रकाशन भी नहीं किया गया, अन्त में आये पहले जाये सिद्धांत की पालना भी नहीं की गयी तथा छंटनी के आज्ञापक प्रावधानों की पालना भी नहीं की गयी, कार्यदिवसों की संख्या भी कम करने के लिए उसमें कृत्रिम रूप से कमी दिखाई गयी । प्रार्थी की सेवायें दिनांक 30-6-92 को समाप्त करना व सेवा समाप्ति से पहले धारा 25-एफ, जी, एच की पालना नहीं करना विधिसम्मत नहीं है । प्रार्थी द्वारा इस सम्बन्ध में माननीय उच्च न्यायालय, जयपुर बेंच में एक रिटयाचिका संख्या 4295/92 प्रस्तुत की गयी जो दिनांक 9-5-97 को निर्णित की गयी एवं प्रार्थी को समझौता अधिकारी के यहाँ कार्यवाही करने का निर्देश दिया गया । समझौता अधिकारी के यहाँ वार्ता असफल हुई । फिर प्रार्थी ने पुन: एक रिटयाचिका माननीय उच्च न्यायालय में 2479/99 प्रस्तुत की जिसमें सरकार को औद्योगिक विवाद रेफर करने का आदेश दिया गया एवं उस आदेश के अनुसरण में भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा यह विवाद इस न्यायाधिकरण को रेफर किया गया । अत: प्रार्थी ने अपने क्लेम स्टेटमेन्ट के माध्यम से उसके कम्पलाईर/चेकर पद से अप्रार्थी द्वारा दिनांक 30-6-92 से मौखिक रूप से सेवायें समाप्त करना अवैध घोषित करने के साथ ही लगातार सेवा में माने जाने व पिछले समस्त वेतन व परिलाभों व सेवा की निरन्तरता के साथ सेवा में बहाल किये जाने के अनुतोष की मांग की है ।

6. अप्रार्थी द्वारा इसका जवाब पेश किया गया जिसमें वर्णित किया गया कि केन्द्रीय सरकार द्वारा प्रत्येक 10 वर्ष में जनगणना का कार्य करवाया जाता है । वर्ष 1991 में भी पूरे देश में राजस्थान सहित जनगणना का कार्य करवाया गया । जनगणना के बढ़े हुए अतिरिक्त कार्य के लिए केन्द्रीय सरकार द्वारा विभिन्न प्रकार के पद अल्पावधि के लिए उपलब्ध करवाये जाते हैं एवं वे पद जनगणना कार्य पूरा होने के साथ को समाप्त हो जाते हैं । भारत के महापंजीयक, जनगणना, नई दिल्ली द्वारा भी अपने आदेश दिनांक 6-11-90 के द्वारा कुल 1864 पद 1-3-91 से 29-2-92 तक की अवधि के लिए स्वीकृत किये गये एवं पदों को बाद में तार दिनांक 4-3-92 के द्वारा जून, 92 तक जारी रखने की स्वीकृति प्रदान की गयी । अत: प्रार्थी का यह कथन असत्य है कि इसकी नियुक्ति मौखिक रूप से की गयी, अपितु इन पद हेतु विज्ञापन के अनुसार साक्षात्कार के आधार पर अनुबन्ध पर प्रार्थी की नियुक्ति कम्पलाईर के पद पर की गयी थी । प्रार्थी का प्रथम अनुबन्ध इसकी नियुक्ति तिथि से 29-2-92 तक व दूसरा अनुबन्ध 3-3-92 से 30-6-92 तक हस्ताक्षरित किया गया था । प्रार्थी का यह कथन भी गलत है कि उसके पद की स्वीकृति 21-12-93 तक ही जारी की गयी । सभी क्षेत्रीय सारणीयन कार्यालय जिसमें कोटा कार्यालय भी सम्मिलित है, 30-6-92 को ही बन्द कर दिये गये थे एवं अनुबन्ध की शर्तों के अनुसार पद समाप्ति के साथ ही प्रार्थी को सेवा से पृथक कर दिया गया था । प्रार्थी को अनुबन्ध में वर्णित समेकित वेतन रु. 900 प्रतिमाह पर अनुबन्धित किया गया था व उसने स्वयं ने अपनी इच्छा से अनुबन्ध पर हस्ताक्षर किये, अत: मौखिक रूप से नियुक्ति किये जाने का तथ्य असत्य व भ्रामक है । इसके अलावा महापंजीयक, जनगणना, नई दिल्ली द्वारा केवल नियमित पदों की स्वीकृति 31-12-93 तक जारी की गयी थी जबकि कम्पलाईर के पद तो 30-6-92 तक ही उपलब्ध थे । चूँकि प्रार्थी अनुबन्ध के आधार पर अनुबन्धित था, अत: वरिष्ठता सूची का प्रकाशन किया जाना या हटाने से पहले क्षतिपूर्ति दिया जाना कतई आवश्यक नहीं था एवं वैसे भी जनगणना का कार्य "उद्योग" की श्रेणी में नहीं आता है, ऐसा "भवानीशंकर गौतम बनाम निदेशक, जनगणना कार्य निदेशालय, राज. जयपुर-प्रकरण सं. औ.न्या./केन्द्रीय/21/99" के मामले के दिये गये निर्णय से भी स्पष्ट है । इसके अलावा अपने जवाब में अप्रार्थी ने प्रार्थी के क्लेम स्टेटमेन्ट में वर्णित तथ्यों को अस्वीकार करते हुए अन्त में प्रार्थी के क्लेम स्टेटमेन्ट को खारिज किये जाने की प्रार्थना की है ।

7. इसके पश्चात् साक्ष्य प्रार्थी में प्रार्थी श्रमिक आम प्रकाश का शपथ-पत्र पेश किया गया, अप्रार्थी द्वारा उससे जिरह की गयी एवं साक्ष्य अप्रार्थी में गवाह एच.सी.शर्मा का शपथ-पत्र पेश हुआ, प्रार्थी द्वारा उससे जिरह की गयी । प्रलेखीय साक्ष्य में उभयपक्ष की ओर से कुछ प्रदर्श जिनमें कि महापंजीयक, जनगणना, नई दिल्ली के आदेश दिनांक 30-11-93 की प्रति, रेफ्रेन्स की प्रति, उभयपक्ष के मध्य निष्पादित सॉविदा-प्रपत्र, महापंजीयक कार्यालय से जारी तार की फोटो प्रति एवं इसके अनुसरण में निदेशक, निदेशालय, जनगणना राजस्थान, जयपुर द्वारा समस्त क्षेत्रीय जनगणना/सारणीयन कार्यालयों को 30-6-92 से समाप्त करने के पत्र व भारत सरकार के महापंजीयक जनगणना द्वारा जनगणना कार्य हेतु प्रत्येक राज्य के निदेशालय हेतु स्वीकृत पदों की संख्या आदि के पत्र हैं, को प्रदर्शित करवाया गया । हालाँकि सभी प्रकरण में ये पत्र प्रदर्शित नहीं हुए परन्तु चूँकि सभी के लिए यह सामग्री आधारभूत है, अत: सभी प्रकरणों के विनिश्चय के लिए इन्हें भी आधार माना गया है ।

8. उभयपक्ष की साक्ष्य समाप्ति के पश्चात् बहस अन्तिम सुनी गयी । बहस के दौरान प्रार्थी की ओर से उनके विद्वान प्रतिनिधि ने दलील दी कि प्रार्थी की नियुक्ति एवं सेवा समाप्ति, दोनों ही मौखिक थीं । प्रार्थी ने 240 दिन से ज्यादा काम किया, इस तथ्य को दोनों पक्ष स्वीकार करते हैं । जनगणना अधिनियम की धारा 4, 11 एवं 18 को उन्होंने उद्धृत किया । धारा 4 में जनगणना कार्य के लिए किनको

नियुक्त किया जायेगा व किस प्रकार से पर्यवेक्षण किया जायेगा, इसका उपबंध है । धारा 11 में जनगणना कार्य की सूचना को हटाने या नष्ट करने या उन्हें कूट-रचित बनाने या अन्य कोई ऐसा ही अनुचित कृत्य करता है तो उसके लिए क्या दण्ड हो सकता है, इसके प्रावधान हैं तथा धारा 18 में नियम बनाने की शक्तियों का उल्लेख है । आगे इसी अधिनियम में कम्पलाईर के पद का उल्लेख हुआ है । उनके द्वारा संविधान के अनुच्छेद 53, 73 एवं 299 को भी उद्धृत किया गया है । जो अनुबन्ध निष्पादित किया जाना बताया जा रहा है उसमें तो प्रार्थी ने केवल हस्ताक्षर ही किये, बाकी सभी इबारत तो अप्रार्थी द्वारा ही भरी गयी है एवं कोई भी अनुबन्ध दोनों पक्षकारों का एक साथ हस्ताक्षर करने पर ही पूर्ण होता है । इस मामले में अनुबन्ध में जहाँ एक ओर प्रार्थी ने कोटा में हस्ताक्षर किये तो भारत सरकार के राष्ट्रपति की ओर से वी.एस. सिसोदिया, निदेशक ने हस्ताक्षर किये जबकि वी.एस. सिसोदिया कोटा में उपस्थित नहीं होकर जयपुर में थे, अतः ऐसा अनुबन्ध विधिसम्मत नहीं कहा जा सकता है एवं इस मामले में अनुबन्ध के प्रावधान लागू भी नहीं होते हैं । प्रार्थी को तो रोजगार चाहिए था, अतः जहाँ पर भी अप्रार्थी ने हस्ताक्षर करवाये, वहाँ उसने हस्ताक्षर कर दिये । प्रार्थी का पद 30-11-93 तक उपलब्ध होने के बावजूद भी उसकी सेवायें 30-6-92 को ही समाप्त कर दी गयी एवं जब प्रार्थी ने 240 दिन से ज्यादा की सेवायें दी हैं तो उसे एक माह का नोटिस अथवा नोटिस अवधि का वेतन व मुआवजा देकर ही सेवायें समाप्त की जानी चाहिए थीं, अतः इन समस्त तथ्यों को दृष्टिगत रखते हुए प्रार्थी का क्लेम स्वीकार किया जावे व इस सम्बन्ध में उसकी ओर से निम्नलिखित न्यायनिर्णय उद्धृत किये गये :

"(1) सावित्री विजय बनाम भारत संघ-2008 (5) डब्ल्यू.एल.सी./राज./पृष्ठ 340—इस न्यायनिर्णय में जनगणना विभाग में नियुक्त कर्मकारों की सेवायें धारा 25-एफ की पालना किये जाने के बगैर समाप्त किये जाने पर मामले को औद्योगिक न्यायाधिकरण को भेजे जाने हेतु निर्देश दिये गये ।

(2) अनूप शर्मा बनाम अधिशासी अभियन्ता, पी.एच.डी. खण्ड । पानीपत/हरियाणा—2010(2) आर.एल.डब्ल्यू. 1586(एस.सी)—इस मामले में धारा 25-एफ की पालना नहीं किये जाने पर कर्मचारी सेवा की निरन्तरता के साथ हकदार होंगे, ऐसा प्रतिपादित किया गया ।

(3) हरजिंदर सिंह बनाम पंजाब राज्य भण्डारण निगम-2010 सीडीआर 401 (एस.सी.) के मामले में यह प्रतिपादित किया गया कि जहाँ नियोक्ता द्वारा "अन्त में आये प्रथम जाये" नियम का उल्लंघन करना सिद्ध हो जाता है तो फिर 240 दिन की अवधि तक कार्य करने की पूर्व शर्त अपेक्षित नहीं है ।

(4) कमिश्नर केन्द्रीय विद्यालय संगठन एवं अन्य बनाम अनिल कुमार सिंह व अन्य-(2003)10 एस.सी.सी. 284—इस मामले में प्रतिपादित किया गया कि जहाँ संविदात्मक नियुक्ति हुई है तो ऐसे कर्मकार की संविदा समाप्त होने की तिथि तक ही सेवा समाप्त नहीं की जानी चाहिए अपितु नियमित भरती तक उसकी सेवायें रखी जानी चाहिए थीं, अतः इस मामले में प्रार्थीगण को नियमित नियुक्ति हेतु आवेदन करने की अनुमति दी गयी ।

(5) राजस्थान राज्य बनाम गिरिराज प्रसाद एवं अन्य 2008 डब्ल्यू.एल.सी.(राज.) यूसी. पृष्ठ 730 इस मामले में अंशकालीन कर्मकार को भी धारा 25 एफ अधिनियम के प्रावधान का लाभ प्राप्त करने का अधिकारी माना गया ।"

9. इसके विपरीत अप्रार्थी की ओर से यह दलील दी गयी कि सर्वप्रथम तो प्रार्थी ने अपनी सेवा में नियुक्ति तथा समाप्ति दोनों ही अप्रार्थी द्वारा मौखिक रूप से बतायी है वह सर्वथा असत्य है, अपितु प्रार्थी की नियुक्ति लिखित अनुबन्ध के आधार पर हुई थी एवं यह लिखित अनुबन्ध स्वयं प्रार्थी के द्वारा हस्ताक्षरित है एवं ऐसे अनुबन्ध पर प्रार्थी ने अपने हस्ताक्षर होना भी स्वीकार किया है । अतः अब प्रार्थी उस अनुबन्ध से परे जाकर यदि कोई कथन करता है तो वह कोई महत्व नहीं रखता है । प्रार्थी ने अनुबन्ध के तथ्यों को ही छिपा दिया है । प्रार्थी ने यह विवाद भी करीबन 10 1/2 वर्ष की देरी से उठाया है । इसके अलावा जनगणना का कार्य तो भारत सरकार द्वारा प्रति 10 वर्ष में एक बार कराया जाता है एवं उसमें महापंजीयक, जनगणना, नई दिल्ली द्वारा प्रत्येक राज्य में जनगणना कराने के लिए आकस्मिक रूप से जिन पदों की जितने समय के लिए आवश्यकता होती है, वही स्वीकृति जारी होती है एवं उस स्वीकृति के अनुसरण में ही राज्य स्तर पर जनगणना निदेशक द्वारा प्रत्येक जिले के लिए अनुबन्ध के आधार पर संविदाकर्मी रखे जाते हैं । प्रार्थी को भी संविदा के आधार पर रखा गया था । औ.वि. अधिनियम की धारा 2(oo)(बीबी) में जहाँ किसी कर्मकार की संविदा के अनवीनिकरण के कारण संविदा तिथि समाप्त होने पर सेवा समाप्त कर दी गयी है तो वह छंटनी की तारीफ में नहीं आता । अतः इस परिभाषा से ही यह स्पष्ट है कि इस मामले में प्रार्थी की छंटनी नहीं की गयी अपितु इसकी सेवायें संविदा समाप्त होने के साथ ही स्वतः समाप्त हो गयी थी । इसके अलावा अप्रार्थी की ओर से एक दलील यह भी दी गयी कि जनगणना निदेशक द्वारा जो पत्र दि. 30-11-93 को जारी किया गया था वह केवल उन्हीं कर्मकारों के सम्बन्ध में था जो पहले से ही नियमित रूप से नियुक्त होकर जनगणना के कार्य में लगे हुए थे, अन्यथा आकस्मिक रूप से या संविदा के आधार पर रखे गये संविदाकर्मियों की तो सेवायें 30-6-92 के पश्चात् जारी नहीं रखने का स्वयं जनगणना निदेशक का तार दिनांक 4-3-92 का है जिसमें स्पष्ट कर दिया गया था कि क्षेत्रीय सारणीयन कार्यालय जून, 92 तक ही काम कर पाएंगे एवं इसी अनुसरण में निदेशक, जनगणना राजस्थान द्वारा पूरे राजस्थान राज्य में क्षेत्रीय सारणीयन कार्यालयों को 30-6-92 को समाप्त किये जाने का आदेश दिया गया । अतः जब प्रार्थी का ना तो कोई कार्य शेष रहा एवं ना ही कोई स्वीकृति थी तो फिर कैसे इसे और आगे रखा जाता । इसके अलावा जनगणना विभाग किसी उद्योग की श्रेणी में भी नहीं आता है क्योंकि वहाँ पर कोई औद्योगिक एवं व्यवसायिक गतिविधियाँ संचालित नहीं होती हैं, यह राज्य का एक सार्वभौमिक कर्तव्य है । प्रार्थी स्वच्छ हाथों से न्यायाधिकरण के समक्ष नहीं आया है, अतः प्रार्थी का क्लेम स्टेटमेन्ट खारिज किया जावे । पूर्व में भी इस न्यायाधिकरण द्वारा इसी प्रकार के कुछ प्रकरण खारिज किये जा चुके हैं ।

उक्त दलीलों के अलावा निम्न न्यायदृष्टांत भी अप्रार्थी की ओर से उदृत किये गये हैं :—

"(1) 1996 लेब.आई.सी. पृष्ठ 915(एस.सी.)—सुल्तान सिंह बनाम हरियाणा राज्य—इस मामले में जहाँ राज्य सरकार ने किसी औद्योगिक विवाद को औद्योगिक विवाद नहीं मानते हुए रेफर करने के इन्कार कर दिया तो माननीय उच्चतम न्यायालय द्वारा सरकार के निर्णय में हस्तक्षेप करने से इन्कार कर दिया गया ।

(2) प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स बनाम श्रम न्यायालय कोजीकोड एवं अन्य—2000 लेब.आई.सी. 649 (केरला उ. न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ संविदा के नवीनीकरण नहीं होने के कारण सेवायें समाप्त हो गयी हैं तो ऐसी सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(3) श्यामलाल सोनी बनाम जेडीए एवं अन्य—आर.एल.डब्ल्यू. 2003 (1) राज. पृष्ठ 171—इस न्यायनिर्णय में प्रतिपादित किया गया कि जहाँ कर्मकार संविदा पर निश्चित अवधि के लिए नियुक्त हुआ, उसने वह संविदा स्वीकार की एवं संविदा अवधि समाप्त होने के पश्चात् सेवा समाप्त हुई तो कर्मकार सेवा में नियुक्त किये जाने का अधिकारी नहीं हो सकता ।

(4) अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा—2001(3)राज. पृष्ठ 1465—इस मामले में भी जहाँ अस्थायी रूप से या तदर्थ संविदा के आधार पर नियुक्ति हुई है तो सेवा समाप्ति के उपरान्त कोई लाभ प्राप्त करने का हकदार नहीं माना गया ।

(5) अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेश कुमार के. भट्ट—2000 लेब.आई.सी. 818 (गुजरात उ.न्या.)— इस मामले में प्रतिपादित किया गया कि जहाँ किसी विशेष अवधि के लिए नियुक्ति हुई हो तो उस अवधि के समाप्त होने पर उस सेवा समाप्ति को छंटनी नहीं माना जा सकता ।

(6) एस.एम. निलाजकर बनाम टेलीकॉम डिस्ट्रिक्ट मैनेजर, कर्नाटका—2003(97) एफ.एल.आर. 608—इस मामले में प्रतिपादित किया गया कि जहाँ किसी योजना के समाप्त होने के साथ ही कर्मकार की सेवायें समाप्त हो जाती हैं तो वह छंटनी की परिधि में नहीं आता है ।

(7) नवोदय विद्यालय बनाम श्रीमती के.आर. हेमावेत्ती—2000 लेब. आई.सी. 3745(कर्नाटक उ.न्या.)—इस मामले में यह प्रतिपादित किया गया कि जहाँ अस्थायी नियुक्ति संविदा के अधीन निश्चित अवधि के लिए हुई है तो 240 दिन से ज्यादा काम पर भी उसकी सेवा अवधि समाप्त होने पर सेवा से पृथक किया जाना छंटनी की परिभाषा में नहीं आता ।"

10. हमने उभयपक्ष द्वारा दी गयी दलीलों तथा उद्धृत किये गये न्यायनिर्णयों में प्रतिपादित सिद्धातों पर मनन किया ।

11. जहाँ तक प्रार्थी की ओर से प्रस्तुत "सावित्री विजय" के निर्णय का सवाल है, इस निर्णय में तो मात्र सरकार को विवाद अधिनिर्णय के लिए निर्देशित किये जाने का आदेश दिया गया । अब हस्तगत मामले में प्रार्थी की सेवायें किस प्रकार की थीं, क्या वह नियमित रूप से भरती की नियमित प्रक्रिया से गुजरकर नियुक्त हुआ या उसे दैनिक अनुबन्ध पर या अवधि विशेष के लिए अनुबंधित किया गया ? इस सम्बन्ध में प्रार्थी की ओर से दलील दी गयी कि प्रार्थी को सेवा में मौखिक रूप से नियुक्त किया गया एवं मौखिक रूप से हटाया गया । अप्रार्थी की ओर से इसका खण्डन किया जाकर प्रार्थी द्वारा संविदा के रूप में नियुक्त होने के संविदा-प्रपत्र की ओर न्यायाधिकरण का ध्यान आकृष्ट किया गया । इस संविदा-पत्र का अवलोकन करने पर यह पाया जाता है कि इसमें प्रार्थी को कम्पलाइर/चेकर के रूप में संविदा निष्पादन की तिथि से लेकर 29-2-92 तक व उसके बाद में एक और संविदा-पत्र के द्वारा 30-6-92 तक रखा गया । अत: ऐसे में जब किसी नियोजन के सम्बन्ध में लिखित रूप से दस्तावेजात पक्षकारों के मध्य निष्पादित हुए हैं तो ऐसे में उन दस्तावेजात से परे जाकर कोई मौखिक साक्ष्य स्वीकार नहीं की जा सकती एवं ना ही अब यह प्रार्थी ऐसे दस्तावेज का खण्डन कर सकता है । स्वयं प्रार्थी ने अपनी जिरह में स्वीकार किया है मुझे कांट्रेक्ट पर रखा गया तथा एक अनुबन्ध समाप्त होने पर दूसरा अनुबन्ध-पत्र भरवाया गया मैंने 30-6-92 तक ही काम किया तथा जितने दिन काम किया उतने दिनों का वेतन मिल चुका है । अनुबन्ध हमने नहीं पढ़ा, बिना पढ़े ही हस्ताक्षर कर दिये । इस सम्बन्ध में न्यायाधिकरण का इतना ही कहना पर्याप्त है कि जहाँ एक व्यक्ति जनगणना विभाग में कार्य करने जा रहा है एवं उसने एक बार या दो बार अनुबन्ध अप्रार्थी के साथ किया है एवं वह बिना पढ़े ही हस्ताक्षर कर रहा है जबकि प्रार्थी उम्रयाप्ता व्यक्ति है तो क्या उससे ऐसी अपेक्षा की जा सकती है? इस सम्बन्ध में उत्तर नकारात्मक ही होगा । कोई भी व्यक्ति बिना पढ़े अनुबन्ध पर शायद ही हस्ताक्षर करेगा, यदि उसे अनुबन्ध की शर्तें मंजूर नहीं थी तो अत: अब उस अनुबन्ध के सम्बन्ध में यह अभिकथन करना कि उसके खाली कागज पर हस्ताक्षर करा लिये गये एवं उसने अनुबन्ध नहीं पढ़ा, इस प्रकार की दलीलें स्वीकार किये जाने योग्य नहीं रहती है एवं यदि इस प्रकार की दलीलें किसी लिखित अनुबन्ध के इस सम्बन्ध में स्वीकार कर ली जायेंगी तो फिर अनुबन्ध की प्रत्येक शर्त या इबारत के खण्डन में मौखिक दलील आएगी एवं लिखित अनुबन्ध का कोई अर्थ नहीं रहेगा, जबकि भारतीय साक्ष्य अधिनियम की धारा 92 में जहां कोई लिखित दस्तावेज निष्पादित किया गया है तो उस दस्तावेज के कन्टेन्ट्स (अन्तर्वस्तु) के सम्बन्ध में कोई मौखिक साक्ष्य स्वीकार किये जाने का निषेध है । अत: प्रार्थी की ओर से इस अनुबन्ध के खण्डन में जो मौखिक दलील दी गयी वह किसी भी रूप में स्वीकार किये जाने योग्य नहीं रहती है ।

12. प्रार्थी की ओर से यह दलील कि उसके अनुबन्ध की तिथि दिनांक 31-12-93 तक थी एवं उसे बीच में हटा दिया गया, इस सम्बन्ध में अप्रार्थी की ओर से महापंजीयक, जनगणना के तार की फोटोप्रति प्रदर्शित करवायी गयी है । इसमें यह वर्णित किया गया कि जो आयोजना से भिन्न या अस्थायी प्रकृति के पद थे, उन्हें समाप्त किये जाने के निर्देश हैं एवं इसी के अनुसरण में जनगणना निदेशालय, राजस्थान द्वारा 30-6-92 को ऐसे पदों को समाप्त किये जाने का

289/61//3-28

आदेश दिया गया एवं उसी तहत प्रार्थी का अनुबन्ध समाप्त कर सेवायें समाप्त की गयी तो इस सम्बन्ध में इतना ही कहना पर्याप्त है कि निदेशक, जनगणना विभाग द्वारा पूर्व में वर्ष 90 में जो पद सृजित किये गये थे, वे जनगणना कार्य के लिए ही थे एवं जैसे ही जनगणना कार्य पूरा हो गया एवं उन पदों की आवश्यकता नहीं रही तो अनुबन्ध समाप्त कर दिया गया, इसमें किसी प्रकार की कोई दुर्भावना लेशमात्र भी नहीं थी एवं यह कार्य ना केवल राजस्थान अपितु पुरे भारत वर्ष में किया गया, अत: इसे विभेदात्मक या भेदभावपूर्वक भी नहीं कहा जा सकता है ।

13. अप्रार्थी की ओर से जो न्यायनिर्णय "प्रबन्धक, जयभारत प्रिन्टर्स एवं पब्लिशर्स/प्रा. लि. कालीकट बनाम श्रम न्यायालय, कोजीकोड" का उदृत किया गया है एवं अन्य न्यायनिर्णय "श्यामलाल सोनी बनाम जेडीए, अनिल कुमार शर्मा बनाम जिला महिला विकास अभिकरण, बाँसवाड़ा अधिशासी अभियन्ता, भवन एवं पथ विभाग, राजकोट बनाम रमेशकुमार के. भट्ट" जो उदृत किये गये हैं, इन सभी में यह स्पष्ट रूप से प्रतिपादित किया गया है कि जहाँ कोई नियुक्ति अनुबन्ध के तहत हुई है तो फिर उस अनुबन्ध का नवीनीकरण नहीं करने पर या निश्चित अवधि समाप्त होने के फलस्वरूप यदि सेवायें समाप्त हो जाती हैं तो उसे छंटनी नहीं माना जा सकता एवं ऐसे में धारा 25-एफ अधिनियम की पालना किया जाना अपेक्षित नहीं है । हस्तगत मामले में भी प्रार्थी की अनुबन्ध के तहत सेवायें समाप्त हुई है तो ऐसी सेवा समाप्ति को छंटनी की तारीफ में नहीं लिया जा सकता एवं ऐसे में धारा 25-एफ की पालना किया जाना लाजिमी नहीं कहा जा सकता ।

14. इस सम्बन्ध में माननीय उच्चतम न्यायालय का न्यायनिर्णय "सैक्रेट्री, स्टेट आफ कर्नाटका एवं अन्य बनाम उमादेवी एवं अन्य— (2006) 4 एस.सी.सी. पृष्ठ 1" का भी महत्वपूर्ण है । इस न्यायनिर्णय के कुछ अंश इस प्रकार के विवाद के सम्बन्ध में निम्नानुसार है :—

"Service Law—Casual Labour/Temporary Employee—Status and rights of—Unequal bargaining power—Effect—Held, such employees do not have any right to regular or permanent public employment—Further, temporary, contractual, casual, ad hoc or daily-wage pubic employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it —Reasons for, discussed in detail—Labour Law."

"Phenonmenon of 'litigious employment' which had arisen due to issuance of such directions by High Courts, and even Supreme Court, highlighted– Held, merely because an employee had continued under cover of an order of the court, under 'litigious employment' or had been continued beyond the term of his appointment by the State or its instrumentalities, he would not be entitled to any right to be absorbed or made permanent in service, merely on the strength of such continuance, if the original appointment was not made by following a due process of selections as envisaged by the relevant rules —It is further not open to the court to prevent regular recruitment at the instance of such employees—Unsustainability of claim to permanence on basis of long continuance in irregular or illegal public employment, discussed in detail."

इसी न्यायनिर्णय के पैरा 30 में माननीय उच्चतम न्यायालय द्वारा जो टिप्पणी की गयी है वह भी महत्वपूर्ण है जो निम्नानुसार है:—

"Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, 'the judicial process would become another mode of recruitment dehors the rules'."

इसी न्यायनिर्णय में आगे पैरा नं. 45 एवं 47 के कुछ अंश भी निम्नानुसार है: —

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain- not at arm s length- –since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an emloyment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular

appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitutions."

"When a person enters a temoporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees."

15. इसके अलावा "राजस्थान राज्य पथ परिवहन निगम, जयपुर बनाम सदासुख गूर्जर-आर.एल.डबल्यू. 2002(4) राज. पृष्ठ 2500" के मामले में माननीय उच्चतम न्यायलय ने यह प्रतिपादित किया कि जहाँ कर्मकार की अनुबन्ध के तहत निश्चित अवधि के लिए नियुक्ति हुई है एवं अनुबन्ध का नवीनीकरण नहीं करने पर एवं अनुबन्ध की अवधि समाप्त होने पर कर्मकार की सेवायें समाप्त हो जाती हैं तो ऐसे में धारा 25-एफ अधिनियम के प्रावधान की पालना अपेक्षित नहीं है ।

16. इसके अलावा अधिनियम की धारा 2(oo) में "छंटनी" की परिभाषा में जो कर्मकार की सेवायें समाप्त करना बताया गया है, उसके अपवाद (बीबी) में यह वर्णित है कि जहां वर्तमान कर्मकार की संविदा के नवीनीकरण के अभाव में सेवायें समाप्त हो जाती हैं तो उसे "छंटनी" नहीं माना जा सकता ।

17. अत: उपरोक्त विधिक स्थिति एवं न्यायनिर्णयों के आलोक में यह तथ्य स्पष्ट हो जाता है कि जहाँ संविदाकर्मी की सेवायें संविदा के तहत समाप्त हो चुकी हैं तो उसे "छंटनी" नहीं माना जा सकता । इसके अलावा माननीय उच्चतम न्यायालय द्वारा ऊपर उद्दृत किये गये "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में इस दलील को भी अस्वीकृत कर दिया गया कि अनुबन्ध पर हस्ताक्षर करते समय कर्मकार ने उसे पढ़ा ही नहीं, आदि बाबत आपत्तियां इस निर्णय के आलोक में किंचित मात्र स्वीकार योग्य नहीं रहती है ।

18. इसके अलावा "मोह, राजमोहम्मद बनाम औ.न्या. एवं श्रम न्यायालय, वारंगल एवं अन्य-2003(2) एल.एल.जे. पृष्ठ 1149" के मामले में माननीय आन्ध प्रदेश उच्च न्यायालय द्वारा जनगणना विभाग के सम्बन्ध में निम्न निष्कर्ष निकाला गया है:-

"The Census Department of the Government of India cannot be said to be an Industry under Section 2(j) of the Industrial Disputes Act, as the functions and activities carried on by the said Department is purely sovereign functions and welfare of the entire nation depends on the information collected, tabulated and prepared by the said department. Hence, the respondent cannot be called to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The function of enumeration of Census work is purely a sovereign function."

19. इसके अलावा एक और न्यायनिर्णय "रामलत बनाम उत्तर प्रदेश राज्य एवं अन्य-2011(130) एफ.एल.आर. (इला.ड.न्या.) पृष्ठ 484" का महत्वपूर्ण है । इस न्यायनिर्णय में भी माननीय उच्च न्यायालय द्वारा कुष्ठ उन्मूलन योजना समाप्त हो जाने पर उस योजना में लगे कर्मकारों द्वारा राज्य के अन्य विभाग में समायोजन किये जाने की याचिका पर निम्नानुसार निष्कर्ष दिया गया है :-

"Appointment--Under the National Leprosy Eradication Programme launched by Central Government—Non-extention of scheme—work refused--Writ Court directed the State to take policy decision for their absorption in any other medical or non-medical department— Approach to State Government--Absorption refused—- Legality of Rightly observed that the absorption of the petitioners against post available in other medical health department would only amount to back door entry which is legally not permissible—No interference warranted—Petition dismissed."

20. अत: ऊपर वर्णित न्यायनिर्णयों में प्रतिपादित सिद्धांतों की विधिक स्थिति आदि के विवेचन के उपरान्त यह स्पष्ट हो जाता है कि प्रार्थी एक संविदा के अधीन नियुक्त कर्मी था ना कि मौखिक रूप से उसे सेवा में नियोजित किया गया एवं ना ही उसे मौखिक रूप से हटाया गया, अपितु संविदा समाप्त होने के उपरान्त उसकी सेवायें समाप्त हुई, अत: ऐसे में उसकी सेवायें समाप्त होना किसी भी रूप में "छंटनी" की परिधि में नहीं आता है । प्रार्थी की संविदा निष्पादन के सम्बन्ध में दी गयी दलीलें भी ऊपर किये गये विवेचन व माननीय उच्चतम न्यायालय द्वारा "कर्नाटक राज्य बनाम उमादेवी एवं अन्य" के मामले में दिये गये निर्णय से स्वत: सार रहित हो जाती हैं एवं माननीय आन्ध्र प्रदेश उच्च न्यायालय ने तो ऊपर उद्दृत किये गये न्यायनिर्णय में भारत सरकार के जनगणना विभाग को "उद्योग" की श्रेणी में ही नहीं माना है एवं इसके अलावा अधिनियम की धारा 2(oo) के अपवाद (बीबी) के तहत जहाँ सेवायें अनुबन्ध के समाप्ति के कारण समाप्त हो जाती हैं तो उसे छंटनी की परिधि में नहीं लाया जा सकता है एवं ऐसे में धारा 25-एफ की पालना भी अपेक्षित नहीं है । प्रार्थी स्वयं ने अनुबन्ध निष्पादित किये जाने के तथ्य को स्वीकार किया है : अनुबन्ध के तहत ही उसने अपनी सेवायें दी हैं । अब उस अनुबन्ध की वैधता का विनिश्चय इस मामले में नहीं किया जा सकता है कि वह अनुबन्ध वैध था या अवैध क्योंकि वह अनुबन्ध अब समाप्त हो चुका है । इसके अलावा प्रार्थी द्वारा अपना विवाद भी करीबन 10 वर्ष की देरी से उठाया गया है जिसका भी कोई संतोषप्रद कारण प्रकट नहीं किया गया है । प्रार्थी की सेवायें अप्रार्थी द्वारा मनमाने तरीके से या भेदभावपूर्वक समाप्त नहीं की जाकर पूरे

भारतवर्ष के अन्य जनगणना कर्मियों के साथ समाप्त की गयी है । यह प्रार्थी व अन्य प्रार्थीगण में से कोई यदि भरती की नियमित प्रक्रिया से गुजरे तो वे उस भरती प्रक्रिया में शामिल किये जाने योग्य भी नहीं थे क्योंकि कुछ प्रार्थीगण तो अधिकतम आयु सीमा से भी काफी ऊपर की आयु सीमा तक पहुंच चुके थे । अत: इन सभी तथ्यों एवं ऊपर किये गये विवेचन का समेकित सार यही है कि प्रार्थी की इस मामले में सेवा समाप्ति जो 30-6-92 को अप्रार्थी द्वारा की गयी है, वह अनुबन्ध की समाप्ति के फलस्वरूप की गयी है एवं ऐसे में प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं बनता है ।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासंगिक आदेश क्रमांक एल-42012/70/98-आईआर (डीयू) दिनांक 10-4-2002 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स को इसी अनुरूप उत्तरित किया जाता है कि हस्तगत मामले में अप्रार्थी निदेशक, जनगणना विभाग, राजस्थान, जयपुर द्वारा प्रार्थी ओमप्रकाश की जो सेवायें समाप्त की गयी हैं, वह अनुबन्ध के तहत ही की गयी हैं एवं ऐसे में उनका यह कृत्य उचित एवं वैद्य था । अत: प्रार्थी ओमप्रकाश किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

प्रकाश चन्द्र पगारीया, न्यायाधीश

नई दिल्ली, 11 जनवरी, 2013

का.आ. 283 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ऑफीसर-इन-चार्ज, मिलट्री डेरी फार्म के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (सीजीआईटी/एलसी/आर/117/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-1-2013 को प्राप्त हुआ था ।

[सं. एल-14012/11/1995-आईआर (डीयू)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th January, 2013

S.O. 283 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/117/96) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the Officer-in-Charge, Military Dairy Farm and their workman, which was received by the Central Government on 6-1-2013.

[No. L-14012/11/1995-IR (DU)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/117/96

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Tirath Prasad,
S/o Shri Leeladhar,
Qr. No. 43, Bilhari
Mandla Road,
Jabalpur .....Workman

Versus

Officer-in-Charge,
Military Dairy Farm
Mandla Road,
Jabalpur ....Management

AWARD

Passed on this 4th day of December, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-14012/11/95-IR(DU) dated 24-4-96 has referred the following dispute for adjudication by this tribunal : –

> " Whether the the action of the management of Military Dairy Farm, Jabalpur in not regularizing the services of Shri Tirath Prasad and terminating him with effect from 31-1-95 is justified? If not to what rellef the workman is entitled to?"

2. The case of the workman, in short is that he was appointed as Labour from September 1990 to April 1994 with the management in Gaushala No.2 continuously. Thereafter he was transferred from Gaushala No.2, Bachchbada to Gaushala No.2 and worked from 17-6-94 to 27-12-94 when he was terminated from the services without giving notice or retrenchment compensation. He worked continuously for more than 240 days and was workman under the provision of Industrial Dispute Act, 1947 (in short the Act, 1947). It is stated that more than 100 workers were working in the said establishment. The management is engaged in a systematic activity of a permanent nature of work which includes calling of employment etc. It is submitted that the workman be reinstated with full back wages.

3. The management appeared and filed Written statement in the case. The case of the management, inter alia, is that the Dairy farm is run by the Army for their own use and is commanded by a Farm officer of the Indian Army who is designated as Officer Incharge of the establishment of defence forces. The Military diary Farm is responsible to supply the milk required for various units established in Jabalpur. The establishment of Diary Farm is in discharge of the sovereign function of the State and the provision of Industrial Dispute Act, 1947 is not applicable. The reference is without jurisdiction and is liable to be rejected. The further case is that the workman was engaged for a period as and when temporary work was available or whenever there was a leave vacancy on account of regular employee proceeded on leave. It is stated that he worked in the year 1992 for 183 days, in the year

1993 for 179 days, in the year 1994 for 230 days and in the year 1995 for 09 days only. He was not engaged through Employment Exchange nor by proper procedure. It is submitted that the reference be answered in favour of the management.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

I. Whether the Military Diary Farm, Jabalpur is an Industry?

II. Whether the action of the management in terminating the services of the workman w.e.f. 31-1-95 is justified?

III. To what relief the workman is entitled?

5. **Issue No.1**

The first important point for adjudication is as to whether the said Diary Farm is an Industry and the Act, 1947 is applicable? According to the management, the Diary Farm is commanded by a Farm Officer of the Indian Army which is the establishment of the defence forces. The Military Diary Farm is responsible to supply the milk required for various units established in Jabalpur. This clearly shows that the nature of business of the Diary Farm is otherwise a trade or business to supply milk to the units of the Army established in Jabalpur. There is no dispute that the employer and employee relationship existed between the management and the workman. The non-existence of profit making motive or any other gainful object is an irrelevant consideration in determining whether an enterprise is an industry or not. The first schedule of the Act, 1947 deals Industries which may be declared to be Public Utility Services under Sub-clause (VI) of Clause (N) of Section 2. The first schedule Clause-8 shows that defence establishment comes under the definition of Industry. The Diary Farm of the Army at Jabalpur is a defence establishment which carries a systematic trade or business to supply milk to the units of the Army establishment. Thus it is clear that it is an industry and the Act 1947 is applicable in the case. This issue is decided in favour of the workman and against the management.

6. **Issue No. II**

The workman has not adduced any evidence to prove his case though ample opportunity was given to him. Lastly his evidence was closed on 29-9-09.

7. The management has examined one witness namely Major Jagjit Baswana who was working as Officer-in-charge, Military Farm, Jabalpur. He has come to support the case of the management. He has stated that the workman was engaged for a few period as and when temporary work was available or whenever a leave vacancy arose when the regular employee proceeded on leave. He has stated the days of work done by him on monthwise of each year from 1992 to 1995. His evidence shows that he had worked in the year 1992 for 183 days, in the year 1993 for 179 days, in the year 1994 for 230 days and in the year 1995 for 09 days only. His evidence clearly shows that he had never worked 240 days in any calendar year. He appears to have worked 208 days in twelve calendar months preceding the date of termination or reference. This is evident that the provision of Section 25 B(2) of the Act, 1947 is not attracted. This shows that there is no violation of the provision of Section 25-F of the Act, 1947. This issue is decided against the workman and in favour of the management.

8. **Issue No. III**

On the basis of the discussion made above, it is clear that the action of the management is justified and there is no violation of the Act, 1947. The workman is not entitled to any relief. The reference is accordingly answered.

9. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 15 जनवरी, 2013

का.आ. 284 .—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 फरवरी, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

केन्द्र	निम्न क्षेत्र के अंतर्गत आने वाले राजस्व गांव
मदुरै जिले के उत्तर मदुरै तालुक में अनैयुर नगरपालिका पोदुंबु	1. अनैयूर बिट I व II 2. कोयिलपाप्पाकुडी 3. मिल्लकरनै 4. एस. आलंगुलम 5. पोदुंबु (बिट I व II) 6. भूतक्कुडी 7. कुलकंगलम (बिट I व II) 8. मेलापनंगुडी 9. कीलपनंगुडी 10. वागैकुलम 11. वदुगपट्टी

[सं. एस-38013/07/2013-एस.एस. I]

नरेश जायसवाल, अवर सचिव

New Delhi, the 15th January, 2013

S.O. 284 .—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby

appoints the 1st February, 2013 as the date on which the provisions of Chapter IV (except Section 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought in to force] of the said Act shall come into force in the following areas in the State of Tamilnadu namely :—

Centre	Area Comprising the Revenue Villages of
Anaiyur Madurai North Taluk Madurai District	1. Anaiyur BIT I & II 2. Koilpappakudi 3. Milakaranai 4. S. Alangulam 5. Pothumbu (BIT I & II) 6. Boothakudi 7. Kulamangalam (BIT I & II) 8. Melapanangadi 9. Keelappanangadi 10. Vagaikulam 11. Vadugapatti

[No. S-38013/07/2013-S.S. I]

NARESH JAISWAL, Under Secy.

नई दिल्ली, 15 जनवरी, 2013

का.आ. 285 .—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 फरवरी, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध तमिलनाडु राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

केन्द्र	निम्न क्षेत्र के अंतर्गत आने वाले राजस्व गांव
तिरूनेलवेली जिले के अंबाससमुद्रम तालुक में दक्षिण वीरवनल्लुर	1. दक्षिण वीरवनल्लुर

[सं. एस-38013/06/2013-एस.एस. I]

नरेश जायसवाल, अवर सचिव

New Delhi, the 15th January, 2013

S.O. 285 .—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st February, 2013 as the date on which the provisions of Chapter IV (except Section 44 and 45 which already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 67 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Tamilnadu namely :—

Centre	Area Comprising the Revenue Villages of
South Veeravanallur Ambasamudram Taluk Tirunelveli District	1. South Veeravanallur

[No. S-38013/06/2013-S.S. I]

NARESH JAISWAL, Under Secy.

नई दिल्ली, 16 जनवरी, 2013

का.आ. 286 .—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 फरवरी, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध उत्तर प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

क्रम सं.	राजस्व गांव	राजस्व परगना	राजस्व तहसील	जिला
1.	कटरी पीपर खेडा	हडहा	उन्नाव	उन्नाव
2.	मझरा पीपर खेडा एहत माली	हडहा	उन्नाव	उन्नाव
3.	नेतुवा ग्रामीण	सिकन्दरपुर सरोसी	उन्नाव	उन्नाव
4.	खैरहा एहत माली	सिकन्दरपुर सरोसी	उन्नाव	उन्नाव

[सं. एस-38013/09/2013-एस.एस. I]

नरेश जायसवाल, अवर सचिव

New Delhi, the 16th January, 2013

S.O. 286 .—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st February, 2013 as the date on which the provisions of Chapter IV (except Section 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Uttar Pradesh namely :—

Sl. No.	Revenue Village	Revenue Pargana	Revenue Tehsil	District
1.	Katari Piper Kheda	Hadha	Unnao	Unnao
2.	Majhara Piper Kheda Ahatmali	Hadha	Unnao	Unnao
3.	Netuwa Gramin	Sikandarpur Sarosi	Unnao	Unnao
4.	Khairha Ahatmali	Sikandarpur Sarosi	Unnao	Unnao

[No. S-38013/09/2013-S.S. I]

NARESH JAISWAL, Under Secy.

नई दिल्ली, 16 जनवरी, 2013

का.आ. 287 .—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 फरवरी, 2013 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध हरियाणा राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

क्रम सं.	राजस्व गांव	हदबस्त संख्या	तहसील	जिला
1.	पट्टी-गदर	19	कैथल	कैथल
2.	पट्टी-चौधरी	20.	कैथल	कैथल
3.	पट्टी-डोगर	21	कैथल	कैथल
4.	पट्टी-खोट	22	कैथल	कैथल
5.	पट्टी-अफगान	23	कैथल	कैथल
6.	पट्टी-कैस्थ सेठ	24	कैथल	कैथल
7.	कंकरा	232	शाहबाद	कुरूक्षेत्र
8.	झमरा	253	शाहबाद	कुरूक्षेत्र

[सं. एस-38013/08/2013-एस.एस. I]

नरेश जायसवाल, अवर सचिव

New Delhi, the 16th January, 2013

S.O. 287 .—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 1st February, 2013 as the date on which the provisions of Chapter IV (except Section 44 and 45 which already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Haryana namely :—

Sl. No.	Name of Revenue Village	Hadbast	Tehsil	District
1.	Patti-Gadar	19	Kaithal	Kaithal
2.	Patti-Choudhri	20	Kaithal	Kaithal
3.	Patti-Dogar	21	Kaithal	Kaithal
4.	Patti-Khot	22	Kaithal	Kaithal
5.	Patti-Afgan	23	Kaithal	Kaithal
6.	Patti-Kaisth Seth	24	Kaithal	Kaithal
7.	Kankra	232	Shahabad	Kurukshetra
8.	Jhamra	253	Shahabad	Kurukshetra

[No. S-38013/08/2013-S.S. I]

NARESH JAISWAL, Under Secy.

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